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# REFORMING THE MOBILE HOME TENANT-LANDLORD RELATIONSHIP: THE OHIO EXPERIENCE

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## I. INTRODUCTION

**M**OBILE HOMES HAVE BECOME THE FASTEST GROWING SECTOR of the housing market. It is estimated that ten million Americans presently live in mobile homes,<sup>1</sup> and the mobile home industry is now providing as much as ninety-five percent (95%) of the supply of new single-family dwellings selling for less than \$20,000.<sup>2</sup> The rising price of conventional housing is making mobile homes the only viable alternative for homeownership by low income and other consumers.<sup>3</sup>

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<sup>1</sup> MANUFACTURED HOUSING INSTITUTE, QUICK FACTS ABOUT THE MANUFACTURED HOUSING INDUSTRY 10 (1979).

<sup>2</sup> DEPT OF HOUSING AND URBAN DEVELOPMENT, FEDERAL HOUSING ADMIN. REPORT ON USED MOBILE HOMES 12 (1975).

<sup>3</sup> Vondal S. Gravlee, former president of the National Association of Home Builders, estimated that "only 4 percent of American families can afford a median-priced home." [1980] HOUS. DEV. REP. (BNA) 917. Courts have taken judicial notice of the importance of mobile homes as an alternative source of low cost housing. For example, the court in *Oak Forest Mobile Home Park, Inc. v. City of Oak Forest*, 27 Ill. App. 3d 303, 326 N.E.2d 473 (1975), stated that:

All of the experts called by both sides agreed that there is a shortage of low-cost housing of the type provided by mobile home parks. This type of housing is unique in that it provides comfortable dwelling at low cost. There is no other mobile home park located within the City and the closest establishment of this type is near the city of Frankfort, some three or four miles away. The courts of Illinois should take judicial notice of this situation which has been stated as a legislative finding in the new Illinois Mobile Home Parks Statute effective September 8, 1971. (Ill. Rev. Stat. 1973, ch. 11-1/2, par. 711). The legislature noted the serious housing shortage in Illinois; difficulty of new construction for moderate and low income citizens because of rising construction costs; depletion of existing housing by demolition and advances in the construction of mobile homes so that proper regulation and licensing thereof could contribute to quality housing for the citizens of Illinois.

*Id.* at 326, 326 N.E.2d at 483. See also *East Pikeland Township v. Bush Brothers*,

The consumers of mobile homes are generally lower income young families and older Americans on fixed or retirement incomes. About one-third of the mobile home households are headed by persons over fifty-five,<sup>4</sup> while another forty percent (40%) are individuals under thirty-five.<sup>5</sup> The median income of a mobile home family in 1976 was \$10,000, and less than one-fourth of all mobile homeowners made more than \$15,000 per year.<sup>6</sup>

Due to the limited income of this group and the successful use of intimidation by mobile home park operators,<sup>7</sup> mobile homeowners are more vulnerable to arbitrary practices and abuses than are other housing consumers. The threat of eviction is more onerous and burdensome on a mobile homeowner than an apartment tenant. When a tenant in an apartment building is evicted, the tenant can simply take his personal belongings and find other housing.<sup>8</sup> A mobile homeowner, however, might suffer severe economic and financial hardship in moving his unit, assuming other park opportunities even existed.<sup>9</sup>

Inc., 13 Pa. Commw. Ct. 578, 319 A.2d 701 (1974); *Bristow v. City of Woodhaven*, 35 Mich. App. 205, 192 N.W.2d 322 (1971); *Anderson v. Township of Highland*, 21 Mich. App. 64, 174 N.W.2d 909 (1969).

<sup>4</sup> FEDERAL TRADE COMMISSION, REPORT OF THE PRESIDING OFFICER, MOBILE HOME SALES AND SERVICE 30 (1979).

<sup>5</sup> *Id.*

<sup>6</sup> Annual Housing Survey: 1976 Mobile Home Households  
Income of Household Heads

|                            |          |
|----------------------------|----------|
| Less than \$5,000 .....    | 21.8%    |
| \$5,000 to \$6,999 .....   | 11.1%    |
| \$7,000 to \$9,999 .....   | 16.9%    |
| \$10,000 to \$14,999 ..... | 27.0%    |
| \$15,000 to \$24,999 ..... | 17.7%    |
| \$25,000 and over .....    | 5.5%     |
| Median .....               | \$10,000 |

ANNUAL HOUSING SURVEY 1976: GENERAL HOUSING CHARACTERISTICS.

<sup>7</sup> As Presiding Officer, Raymond Rhine of the Federal Trade Commission observed that: "Because of the various ingredients in the mobile home buyer's profile, many people believe that as a group this population is vulnerable to abuses and is unlikely to be able to afford legal assistance when problems arise." FEDERAL TRADE COMMISSION, PRESIDING OFFICER REPORT, MOBILE HOME SALES AND SERVICES 32 (1979).

<sup>8</sup> This is not to belittle the psychological or pecuniary hardships suffered by apartment tenants subjected to the eviction process; rather, this argument relates to the relative economic impact that the threat of eviction would have on these two groups of renters.

<sup>9</sup> The economic hardships of moving a mobile home were documented by the Ohio Department of Commerce in its MOBILE HOME BUYER'S GUIDE (1973). The guide states that:

[D]ue to their size, mobile homes are no longer easily movable. A modern mobile home is at least 12 feet wide, 60 feet long and weighs 6 tons. They are not designed to be moved often and most manufacturers will not guarantee a home which has been moved from its original site. The cost of hiring a truck company to transport the home usually prohibits all but short moves.

Ohio has experienced its share of this growth in mobile home living. Ohio already ranks among the top ten states for the total number of existing mobile homes.<sup>10</sup> In addition, the sale of new and used mobile homes in Ohio has grown into a multi-million dollar business.<sup>11</sup> Ohio has been slow, however, to respond to the needs of housing consumers who choose to live in mobile homes. Not until late 1977 was there a landlord-tenant law for mobile home residents. This article will review the development of the Ohio mobile home landlord-tenant law and the rights and obligations of mobile homeowners and park operators under this law.

## II. LEGISLATIVE HISTORY

When the General Assembly in 1974 enacted the Ohio Landlord-Tenant Act,<sup>12</sup> it did not specifically include mobile homes within its scope. Under the Act, the definition of "residential premises" specifically exempted "agricultural trailer camps," but did not mention "house trailers."<sup>13</sup> This lack of specificity was the basis for claiming that this important piece of legislation was intended to include the landlord-tenant relationship of Ohio mobile homeowners.

The first major test of the scope of the Ohio Landlord-Tenant law in connection with mobile homes arose in *Farley v. Reynolds Village Mobile Home Park*<sup>14</sup> in 1976. Claiming that Reynolds Village had not fulfilled its obligations to its tenants, a mobile homeowners association sought judicial relief. The trial court ruled that Ohio's landlord-tenant law did not apply to mobile homes; the Sixth District Court of Appeals of Ohio upheld the lower court, declaring:

The mere space or lot leased by Defendants as park owner to Plaintiffs to park their mobile homes was not a "residential premises" within the meaning of Section 5321.01(c) R.C., because the mere space or lot was not a "dwelling unit" for residential use or occupancy and the structure of which it is a part, and the grounds, areas and facilities for the use of the tenants generally.<sup>15</sup>

<sup>10</sup> DEPT OF COMMERCE, BUREAU OF THE CENSUS, GENERAL HOUSING U.S. SUMMARY VOLUME (1972).

<sup>11</sup> Sales of new and used mobile homes in Ohio during 1978 exceeded 13,000 units with annual sales of over 150 million dollars. MANUFACTURED HOUSING IN OHIO 3 (March 1979) [hereinafter cited as MANUFACTURED HOUSING IN OHIO].

<sup>12</sup> OHIO REV. CODE ANN. §§ 5321.02-.19 (Page 1981).

<sup>13</sup> The definition of "residential premises" in OHIO REV. CODE ANN. § 5321.01(C) (Page 1974) includes a list of exemptions from the law. Specifically exempted from coverage of OHIO REV. CODE ANN. § 5321.01 (Page 1974) were: "7. Dwelling units subject to the provisions of Sections 3733.41 to 3733.48 of the Revised Code." *Id.* This exemption referred to "agricultural trailer camps" established to house migrant farm workers during their employment.

<sup>14</sup> *Farley v. Reynolds Village Mobile Home Park*, No. CVJ76-04128 (Toledo Mun. Ct. 1976), *aff'd*, No. L76-100 (6th Dist. 1976).

In July, 1976, a tenants' organization was formed in Birchwood Manor Mobile Home Park in Ravenna. Arthur Howard, the president of the tenant association, received a notice to leave the premises and several eviction proceedings began during 1976. In *Birchwood Manor Mobile Home Park v. Howard*,<sup>16</sup> the tenants' attorneys claimed that the eviction was forbidden by the Landlord-Tenant Act which states, in pertinent part:

[A] landlord may not retaliate against a tenant by . . . bringing or threatening to bring action for possession of the tenant's premises because:

. . .

(3) The tenant joined other tenants for the purpose of negotiating or dealing collectively with the landlord on any of the terms and conditions of a rental agreement.<sup>17</sup>

The park operator's attorneys, citing *Farley*, countered that the courts had already declared that the landlord-tenant law did not cover mobile homes. The trial court permitted the pleading of a retaliatory defense. As a result, the jury found the defendant tenant not guilty of the offense charged.<sup>18</sup>

On appeal, the park operator argued that the judge could not allow such a ruling because Ohio law did not place mobile homes under the protection of the Landlord-Tenant act. The Eleventh District Court of Appeals of Ohio reversed, stating:

The key point, as to the instant case, is that the property in question is a lot in a mobile home park. An important question is whether R.C. 5321.02 applies to mobile home parks. . . . We agree with the Court of Appeals of Lucas County and hold that the parties to this appeal do not have the relationship of landlord and tenant within the meaning of Chapter 5321 of the Ohio Revised Code.<sup>19</sup>

With the Ohio courts continuing to declare that the landlord-tenant legislation did not apply to mobile homes,<sup>20</sup> the General Assembly acted to extend the coverage of the law to this area. Despite opposition from realtors and mobile home park operators, the legislature passed three

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<sup>16</sup> *Birchwood Manor Mobile Home Park v. Howard*, No. R76-1748 (Portage Cty. Mun. Ct. 1977).

<sup>17</sup> OHIO REV. CODE ANN. § 5321.02(A)(3) (Page 1981).

<sup>18</sup> *Birchwood Manor Mobile Home Park v. Howard*, No. R76-1748 (Portage Cty. Mun. Ct. 1977).

<sup>19</sup> *Birchwood Manor Mobile Home Park v. Howard*, No. 758, Slip Op. at 4-6 (11th App. Dist. 1978).

<sup>20</sup> See notes 16, 18, 19 *supra* and accompanying text.

bills pertaining to mobile home landlord-tenant relations.<sup>21</sup> The current Ohio Mobile Home Landlord-Tenant law<sup>22</sup> is the creation of these three pieces of reform legislation.

Much of the Mobile Home Landlord-Tenant law came directly from the original landlord-tenant law for apartment tenants. The rights and obligations of landlord and tenant were carried over to the new law, as were provisions concerning retaliation, rent deposit, security deposit and prohibited lease clause provisions.<sup>23</sup> More specific protections were needed, however, to relate to the unique position of mobile homes in the housing market, which was clearly apparent even in the definitional section of this law. For example, rental agreement terms in the mobile home law had to reflect the rental of land, not a home. Thus, while the definition sections are parallel in the two laws, only Ohio Revised Code sections 5321.01 (D), (E) and (J) have counterparts in sections 3733.01 (M) and (N).<sup>24</sup> The only other defined words of the landlord-tenant law are

<sup>21</sup> Early in the 1977 session, House Bill 29 was introduced by Representative Lancione. Although it finally passed in weakened form, H.B. 29 was not the final word. Senate Bill 86 was introduced by Senator McCormick later in the year; its stated purpose was to repeal parts of H.B. 29 and H.B. 226, both passed by the 112th General Assembly, the former to take effect January 13, 1978, and the latter on November 18, 1977. The intended purpose of S.B. 86 was to correct errors in H.B. 29, repeal other sections and add new restrictions on rental agreements.

<sup>22</sup> OHIO REV. CODE ANN. §§ 3733.01-.20 (Page 1980).

<sup>23</sup> A comparison of the two laws may be found in the following table:

| TABLE 1  |                                    |                 |              |
|--|------------------------------------|-----------------|--------------|
| Comparison Between OHIO REVISED CODE ANN. §§ 5321 and 3733 |                                    |                 |              |
| Landlord-Tenant Law  |                                    | Mobile Home Law |              |
| Section  | Terms                              |                 | Section      |
| 5321.01  | Definitions                        |                 | 3733.01      |
| 5321.02  | Retaliation                        |                 | 3733.09      |
| 5321.03  | Landlord Remedies                  |                 | 3733.091     |
| 5321.04  | Obligations of Landlord            |                 | 3733.10      |
| 5321.05  | Obligations of Tenant              |                 | 3733.101     |
| 5321.06  | Rental Agreement Terms             |                 | 3733.11      |
| 5321.07  | Notice to Remedy Conditions        |                 | 3733.12      |
| 5321.08  | Duties of Clerk of Court           |                 | 3733.121     |
| 5321.09  | Landlord Apply for Release of Rent |                 | 3733.122     |
| 5321.10  | Partial Release of Rent            |                 | 3733.123     |
| 5321.11  | Tenant Noncompliance               |                 | 3733.13      |
| 5321.12  | Damages                            |                 | 3733.14      |
| 5321.13  | Rental Agreement Terms Barred      |                 | 3733.15      |
| 5321.14  | Unconscionability                  |                 | 3733.16      |
| 5321.15  | Restrictions on Landlord           |                 | 3733.17      |
| 5321.16  | Security Deposits                  |                 | 3733.18      |
| 5321.17  | Termination of Periodic Tenancies  |                 | no provision |
| 5321.18  | Data on Owner and Operator         |                 | 3733.19      |
| 5321.19  | Conflicting Ordinances             |                 | 3733.20      |

<sup>24</sup> See OHIO REV. CODE ANN. § 3733.01 (Page 1980); OHIO REV. CODE ANN. § 5321.01 (Page 1981).

"landlord," "residential premises" and "dwelling unit." For the mobile home counterpart law, twelve other terms were added.<sup>25</sup>

The transition from an apartment landlord-tenant law to a second law for mobile homes was not a radical step, but one based on rights guaranteed to tenants since the 1974 Act. Since the mobile home legislation was patterned after the earlier law, decisions based on the apartment landlord-tenant law may arguably be relied upon in interpreting the mobile home landlord-tenant law. Because this legislation created a new and more balanced relationship between mobile homeowners and park operators, it may be considered remedial in nature. When interpreting reform statutes, Ohio courts are mandated to liberally construe their provisions in order to effectuate the law's objectives;<sup>26</sup> the Mobile Home Landlord-Tenant law should therefore be given a broad and liberal construction. Doubts about coverage or protections should be construed in favor of persons whom the legislation was enacted to assist, namely mobile homeowners.<sup>27</sup>

### III. PROVISIONS OF THE OHIO MOBILE HOME LANDLORD-TENANT LAW

This section of the article will review the impact of the Ohio General Assembly's efforts to rebalance the rights and obligations of mobile homeowners and park operators in this new legislation. Special emphasis will be placed on examining new rights and remedies which have been created to protect mobile homeowners from abuse by park operators.

#### A. *Rental Agreements*

Under the new legislation, "rental agreement" means: "Any agreement or lease, written or oral, that establishes or modifies the terms, conditions, rules, or any other provisions concerning the use and occupancy of residential premises by one of the parties."<sup>28</sup> Using this term, the legislature developed a series of protections for mobile homeowners. Many of these protections do not have a counterpart in the apartment

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<sup>25</sup> OHIO REV. CODE ANN. §§ 3733.01(A)-(I) and (K)-(L) (Page 1980), include definitions of "house trailer park," "recreational vehicle park," "portable camping units," "house trailer," "recreational vehicle," "self-contained recreational vehicle," "dependent recreation vehicle," "recreation camp," "combined park camp," "Licensor," "Park Operator" and "residential premises."

<sup>26</sup> *Rose v. King*, 49 Ohio St. 213, 30 N.E. 267 (1892). OHIO REV. CODE ANN. § 1.11 (Page 1980) leaves no question as to this rule: "Remedial laws and all proceedings under them *shall be liberally construed* in order to promote their object and assist the parties in obtaining justice." *Id.* (emphasis added).

<sup>27</sup> *Cox v. Roth*, 348 U.S. 207 (1955); *Cosmopolitan Shipping Co. v. McAllister*, 337 U.S. 783, 790 (1948); *Markham v. Cabell*, 326 U.S. 404, 409 (1945).

<sup>28</sup> OHIO REV. CODE ANN. § 3733.01(M) (Page 1980). This is the identical definition found in OHIO REV. CODE ANN. § 5321.01(D) (Page 1974).

landlord-tenant law, indicating that the legislature did consider some of the unique problems faced by a person owning a mobile home but renting lot space from a park operator.

Unlike a tenant in an apartment building, the mobile homeowner is required to be offered a one year lease prior to moving into the park.<sup>29</sup> The obvious intent of this requirement is to protect the mobile homeowner for at least twelve months from the economic hardships associated with being deported, part and parcel, from the park without good cause.<sup>30</sup>

Another provision of a rental agreement is the disclosure of the park owner's and his agent's name and address.<sup>31</sup> If the mobile homeowner signs a written lease, the document must contain this information.<sup>32</sup> Where the rental agreement is oral, the tenant must receive a written notice relaying this data at the beginning of the term of his occupancy.<sup>33</sup> Failure to meet this disclosure requirement waives the park operator's right to receive notice of a rent deposit from either the tenant or the municipal court.<sup>34</sup>

Fees, charges, assessment and park rules must be disclosed in writing to the mobile homeowner prior to any execution of the rental agree-

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<sup>29</sup> "The park operator shall offer the tenant the opportunity to sign a rental agreement for a minimum of one year for residential premises prior to installation of the house trailer in the house trailer park, the terms of which shall be essentially the same as for any alternate month-to-month tenancy." OHIO REV. CODE ANN. § 3733.11(A) (Page 1980). For a discussion of other states' laws requiring leases to be offered to mobile homeowners, see Note, *Closing the Gap: Protection for Mobile Home Owners*, ARIZ. ST. L.J. 101, 105-10 (1974) [hereinafter cited as *Protection for Mobile Homeowners*].

<sup>30</sup> See note 9 *supra*. It is interesting that the 1976 Annual Housing Survey points out that while eighty-two percent (82%) of the persons living in mobile homes purchase the units, over seventy-six percent (76%) rent the land where the home is placed. This often places the mobile homeowner in landlord-tenant conflicts which justify the need for this provision. The great investment in purchasing a mobile home and the expenses incurred to move such a unit create a "reasonable expectation" among the parties that the termination of a rental agreement will only occur with justification as a matter of equity. Another possible argument supporting this position would be that the park operator by inducing the mobile homeowner to move his unit on his property is estopped from evicting the tenant without good cause. Ohio courts have been willing to support this type of argument based on detrimental reliance by one party in other contractual matters. *Grove v. Ohio State University*, 424 F. Supp. 377 (S.D. Ohio 1976); *Gruber v. Chesapeake and Ohio Ry. Co.*, 158 F. Supp. 593, 6 Ohio Ops.2d 317 (N.D. Ohio 1958); *Murnell v. Elder-Beerman Stores Corp.*, 16 Ohio Misc. 1, 239 N.E.2d 24 (1968); see also notes 7-9 *supra* and accompanying text.

<sup>31</sup> OHIO REV. CODE ANN. § 3733.19 (Page 1978). The identical provision is found in OHIO REV. CODE ANN. § 5321.18 (Page 1978), of the apartment landlord-tenant law. For an excellent discussion of this provision in Chapter 5321 see Campion, *The Ohio Landlord and Tenant Reform Act of 1974*, 25 CASE W. RES. L. REV. 876, 957 (1975) [hereinafter cited as *Ohio Landlord and Tenant Reform Act*].

<sup>32</sup> OHIO REV. CODE ANN. § 3733.19(A) (Page 1978).

<sup>33</sup> *Id.* § 3733.19(B).

<sup>34</sup> *Id.* § 3733.19(C).



ment.<sup>35</sup> A park operator is prevented from collecting any undisclosed fees, charges or assessments under the new legislative scheme;<sup>36</sup> nor can the park operator use the refusal by the mobile homeowner to pay these undisclosed costs as a cause for eviction.<sup>37</sup> The law permits, however, the amendment of rules, charges, assessments and fees if a thirty day written notice to all tenants in the park is given.<sup>38</sup> Under this provision, a park operator could possibly avoid the disclosure requirements.

Several states have attempted to avoid this problem by prohibiting certain types of fees from being charged by a park operator.<sup>39</sup> The Ohio statute does so to a limited extent by prohibiting a park operator from charging a fee for the installation of an electric or gas appliance,<sup>40</sup> or the sale of the mobile home unless the tenant contracts for the service with the park operator.<sup>41</sup> Also, the Ohio General Assembly presently has before it a bill proposing additional specific fee prohibitions.<sup>42</sup> Until the legislature acts, the mobile homeowner can argue that specific fees, assessments or rules which are arbitrary or without justification violate

<sup>35</sup> *Id.* § 3733.11(B). For a discussion on other state laws regulating disclosure of fees, see *Protection for Mobile Homeowners*, *supra* note 29, at 108-13. See also Note, *Mobile Home Park Practices: The Legal Relationship Between Mobile Home Park Owners and Tenants Who Own Mobile Homes*, 3 FLA. ST. L. REV. 103, 111-19 (1975) [hereinafter cited as *Mobile Home Park Practices*]. Many states have disclosure provisions to protect mobile homeowners similar to Ohio's. See, e.g., CAL. CIV. CODE § 789.5(d)(3) (West Supp. 1979); DEL. CODE ANN. tit. 24, § 7009(a)(3)(e) (Supp. 1978); FLA. STAT. ANN. § 83.271(1)(c) (West Supp. 1979); ME. REV. STAT. ANN. tit. 140, § 32P (West 1978); MINN. STAT. ANN. § 327.42 (Supp. 1980); N.J. STAT. ANN. § 48:8C-1(c) (West Supp. 1979-80); N.Y. SESS. LAWS ch. 973, § 233(f) (McKinney 1979); WIS. ADMIN. CODE ch. Ag. 125.03(1)(c) (West 1979).

<sup>36</sup> OHIO REV. CODE ANN. § 3733.11(B) (Page 1978).

<sup>37</sup> *Id.* The pertinent part of this statute states: "Failure on the part of the park operator to fully disclose all fees, charges, or assessments shall prevent the park operator from collecting the undisclosed fees, charges or assessments. If a tenant refuses to pay any undisclosed charges, fees, or assessments, the refusal shall not be used by the park operator as a cause for eviction in any court." *Id.* A similar provision is found in the Massachusetts law. See MASS. GEN. LAWS ANN. ch. 14C, § 32J(2) (West 1978).

<sup>38</sup> OHIO REV. CODE ANN. § 3733.11(B) (Page 1978). The pertinent part of this statute states:

No fees, charges, assessments, or rental fees so disclosed may be increased nor rules changed by a park operator without specifying the date of implementation of the changed fees, charges, assessments, rental fees, or rules, which date shall be not less than thirty days after written notice of the change and its effective date to all tenants in the house trailer park.

*Id.*

<sup>39</sup> For example, both California and Delaware prohibit the charging of entrance fees into a park. See CAL. CIV. CODE § 789.8 (West Supp. 1979); DEL. CODE ANN. tit. 25, § 7009(b)(5) (Supp. 1979).

<sup>40</sup> OHIO REV. CODE ANN. § 3733.11(E) (Page 1978).

<sup>41</sup> *Id.* § 3733.11(K).

<sup>42</sup> House Bill 238 introduced by Representative Healy would prohibit the charging of either entrance or exit fees by the park operator.

the present general legislative standards of "reasonableness"<sup>43</sup> or "unconscionability."<sup>44</sup>

In addition to prohibiting specific fees, the statute outlaws certain practices of park operators which are oppressive to mobile homeowners, for example, requiring the tenant to purchase skirting, equipment for tying down the mobile home or other equipment from the park operator,<sup>45</sup> and restricting the right to install electric and gas appliances.<sup>46</sup> Similar to this is the prohibition against requiring the mobile homeowner to use the services of either the park operator or any other person as a condition or prerequisite of entering into a rental agreement.<sup>47</sup> This provision protects the mobile homeowner from facing outrageous costs for services which could not be avoided if the mobile homeowner desired to rent from the park operator.<sup>48</sup>

The Ohio General Assembly, following the 1974 Apartment Landlord-Tenant Act, has prohibited a rental agreement from containing four specific types of clauses.<sup>49</sup> The clauses outlawed by the act are: (1) a war-

<sup>43</sup> OHIO REV. CODE ANN. § 3733.11(C) (Page 1978).

<sup>44</sup> *Id.* § 3733.16.

<sup>45</sup> *Id.* § 3733.11(D). However, the provision does not prevent the park operator from determining "by rule the style or quality of such equipment to be purchased by the tenant from a vendor of the tenant's choosing, provided that the equipment is readily available to the tenant." *Id.* This same type of provision is in many state mobile home laws. See DEL. CODE ANN. tit. 25, § 7009(a)(1)(j) (Supp. 1979); FLA. STAT. ANN. § 83.281(1) (West Supp. 1980); ME. REV. STAT. ANN. § 4061 (Supp. 1980); MASS. GEN. LAWS ANN. ch. 140 § 32L(3) (West 1979); N.J. STAT. ANN. § 46:8C-2(a) (West Supp. 1979); N.Y. SESS. LAWS ch. 973, § 233(f)(3)(a) (McKinney 1979); WIS. ADMIN. CODE ch. Ag. 125.04(a) (West 1979).

<sup>46</sup> Similar restrictions are found in other states, but hold the park operator to a "reasonable" standard. N.Y. REAL PROP. LAW § 233 (Supp 1980). See *Miller v. Valley Forge Village*, 43 N.Y.2d 626, 403 N.Y.S.2d 207, 374 N.E.2d 118 (1978).

<sup>47</sup> OHIO REV. CODE ANN. § 3733.11(G) (Page 1978).

<sup>48</sup> This type of practice has been well documented. See Center for Auto Safety, *Mobile Homes: The Low-Cost Housing Hoax* (Grossman Publishers, New York 1975) [hereinafter cited as *Low-Cost Housing Hoax*].

Often parks will permit companies that sell, service, and repair accessories (awnings, utility sheds, etc.) to do business in the park only if they agree to kick back a part of their take to the management. The cost of this kickback to the outside businessman is of course passed on to the tenant. Walter Sanders, the president of Dearborn (Michigan) Mobile Skirting, writes:

In all but a few parks, we are not allowed admittance because they have their own preferred dealership. If they let us in, as in Holiday Woods in Bellville, Mich., I have to pay the manager \$35 for each skirting job . . . . The kickbacks I have to pay mean higher prices to the consumer.

*Id.* at 73.

<sup>49</sup> For an excellent analysis of these provisions in regards to Ohio chapter 5321, see *Ohio Landlord-Tenant Reform Act*, *supra* note 31, at 950-55. In that these provisions are identical in both statutes, the extensive legal analysis and decisional matter in this article apply equally to the mobile home statute.

rant of attorney to confess judgment;<sup>50</sup> (2) payment of attorney fees for either the tenant or park operator;<sup>51</sup> (3) exculpatory or indemnification clauses attempting to limit the park operator's liability;<sup>52</sup> and (4) the offer of renting without cost to the mobile homeowner in exchange for the releasing of the park operator's obligations under Ohio Revised Code section 3733.10.<sup>53</sup>

Possibly the most important provision relating to the rental agreement is the general prohibition that neither the mobile homeowner nor the park operator can modify or waive any requirement imposed by the law.<sup>54</sup> The only exception to this otherwise total prohibition is that the park operator can undertake the mobile homeowner's obligations under section 3733.101 of the Ohio Revised Code.<sup>55</sup>

### B. *Obligations of Park Operators*

A comparison of the park operator's responsibilities and duties under the Ohio Mobile Home Landlord-Tenant Act<sup>56</sup> with those of landlords under the Ohio Tenant-Landlord Act<sup>57</sup> reveals the former's reliance on the latter as well as the Ohio legislature's failure to recognize, in some instances, the hybrid nature of mobile home ownership.<sup>58</sup> For example, the *owner* of a mobile home is *renting*, probably on a monthly leasehold,

<sup>50</sup> OHIO REV. CODE ANN. § 3733.15(B) (Page 1978).

<sup>51</sup> *Id.* § 3733.15(C).

<sup>52</sup> *Id.* § 3733.15(D).

<sup>53</sup> OHIO REV. CODE ANN. § 3733.15(E) (Page 1980).

<sup>54</sup> This prohibition flows from two sources. First, under § 3733.11(L) the statute provides that:

A park operator and a tenant may include in a rental agreement any terms and conditions, including any term relating to rent, the duration of an agreement, and any other provisions governing the rights and obligations of the parties that are not inconsistent with or prohibited by sections 3733.09 to 3733.20 of the Revised Code or any other rule of law.

OHIO REV. ANN. § 3733.11(L) (Page 1980). An even more specific reference is made under § 3733.15(A) which states: "No provision of sections 3733.09 to 3733.20 of the Revised Code may be modified or waived by any oral or written agreement except as provided in division (F) of this section." OHIO REV. CODE ANN. § 3733.15(A) (Page 1980). These two provisions are very important because of the unequal bargaining positions between mobile homeowners and park operators. Except for this prohibition, park operators could require mobile homeowners to waive their rights under the statute as a condition of renting from them. This would make a sham of all the protections under the law.

<sup>55</sup> OHIO REV. CODE ANN. § 3733.15(F) (Page 1980).

<sup>56</sup> See generally OHIO REV. CODE ANN. § 3733.10 (Page 1980).

<sup>57</sup> See generally OHIO REV. CODE ANN. § 5321.04 (Page 1980).

<sup>58</sup> The similarities in both laws goes far beyond just these two sections. For example, compare OHIO REV. CODE ANN. §§ 5321.16 (Page 1980) and 3733.18 (Page 1980) on security deposits, or §§ 5321.13 and 3733.15 on prohibited clauses in leases, each pair of sections being identical.

the land from which the home cannot be removed without incurring significant damage.<sup>59</sup>

Any review of mobile home park operator's responsibilities must begin by analyzing the state licensing procedures for house trailer parks.<sup>60</sup> These procedures have been modified numerous times since first going into effect in 1953.<sup>61</sup> The Ohio Public Health Council has the "exclusive power to make rules of general application throughout the state governing the issuance of licenses, location, layout, construction, drainage, sanitation, safety, tiedowns, and operation of house trailer parks."<sup>62</sup> Using this statutory authority, the Council has adopted application requirements and licensing procedures.

The Public Health Council has adopted an application procedure requiring that prior to either creating or adding to a mobile home park, the plans for such a facility must be approved by the agency or its designated health district.<sup>63</sup> This plan, once approved, arguably takes on the nature of a social contract between the State and the park operator with the tenant as a third party beneficiary. The State is providing the park operator a limited monopoly to rent lot spaces for mobile homes so long as the operator meets the statutory and regulatory standards.<sup>64</sup> If the plan is not followed, the violation is actionable.<sup>65</sup> The plan describes

<sup>59</sup> See note 8 *supra* and accompanying text.

<sup>60</sup> Under Chapter 3733, mobile home parks are referred to as "house trailer parks." This term is anachronistic and relates to the time when mobile homes were vehicles pulled by a person's automobile. The continued use of this term reflects the latent prejudice still existing against the establishment of such facilities.

<sup>61</sup> The effective date for the original Chapter 3733 was October 1, 1953. OHIO REV. CODE ANN. § 3733.01 (Page 1980) (History).

<sup>62</sup> OHIO REV. CODE ANN. § 3733.02(A) (Page 1980).

<sup>63</sup> OHIO AD. CODE § 3701-27-05 (1980).

<sup>64</sup> Because local restrictions in effect require a mobile home owner to rent land, the park owner has a preeminent place in this housing market. Almost half of all mobile homes are located in parks, which often have waiting lists of prospective residents. The established park owner can usually depend upon the community to keep competition away.

Note, *The Community and the Park Owner versus the Mobile Home Park Resident: Reforming the Landlord-Tenant Relationship*, 52 BOSTON UNIV. L. REV. 810, 812 (1972); see *Lavoie v. Bigwood*, 457 F.2d 7 (1st Cir. 1972). See also discussion at note 30 *supra*.

<sup>65</sup> Under OHIO REV. CODE ANN. § 3733.10(B) (Page 1980), mobile home tenants are authorized to sue for actual damages, obtain injunctive relief to prevent the recurrence of public health council rules being violated and, if the plaintiffs obtain a judgment, reasonable attorney fees. This is a statutory recognition of a private right of action. Even when not so specifically provided, an implied private right of action will exist under a statute by the intended beneficiary when the following standard is satisfied:

(a) whether plaintiff is "one of the class for whose especial benefit the statute was enacted," (b) whether the legislative history shows any intent to deny or grant a private remedy, (c) whether implying a private

the total area to be used for mobile home park purposes including the plot plan, location, number and sizes of lots, location and design of buildings, the internal street system and parking areas, the provisions for electrical distribution system and lighting, fire protection, sanitary sewerage and water distribution system, and solid waste collection and storage.<sup>66</sup> The plan's detail thus defines both what is the duty of the park operator to provide and what is a reasonable expectation of the tenant. The obligation of the park operator to comply with health council rules must begin with his fulfillment of the conditions contained in the approved submitted plan.<sup>67</sup>

Licensing of mobile home parks is required on an annual basis and is required on or before the first day of January. The initial and subsequent license issuances require an inspection relative to compliance with Ohio Revised Code sections 3733.01 to 3733.08<sup>68</sup> and the rules adopted thereunder.<sup>69</sup> The health district responsible for licensing is subject to inspection itself by the Director of the Department of Health to determine if the district is in "substantial" compliance<sup>70</sup> with code requirements, and that finding will put the health district on an approved list. The district's failure to qualify will cause the Director to collect all fees until the district is returned to the approved list. Fees are determined by the mobile home capacity of the park.<sup>71</sup>

Failure to comply with any rule adopted by the public health council

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remedy would be consistent with the underlying legislative scheme and (d) whether the cause of action is one traditionally relegated to state law.

Owens v. Haas, 601 F.2d 1242, 1247 (2d Cir. 1979), *cert. denied*, 444 U.S. 980 (1979).

In addition there is an enforceable contract by the third party beneficiary, the mobile homeowner, in the implied contract between the state and park operators. Enforceable rights under a theory of contract, if the contract was made to insure the health and welfare of tenants, may issue from the licensing powers of the Ohio Health Council. The license certifies that the park operator has complied with regulations affecting health and safety promulgated by the council which is a creature of a state agency, The Department of Health. *See* OHIO REV. CODE ANN. § 3701.34 (Page 1980). To paraphrase the court in *Holbrook v. Pitt*, 643 F.2d 1261, 1271 (7th Cir. 1981), if the mobile home tenants are not the primary beneficiaries of a program designed to preserve and improve the public health in mobile home parks, the legitimacy of the program is placed in grave doubt. The importance of these legal alternatives relates to the limited powers of the Health Council to enforce its regulations without revoking licenses which, in closing the park, may punish the mobile home tenant more than the park operator. *See* OHIO REV. CODE ANN. § 3733.05 (Page 1980). *See generally*, Jones, *Legal Protection of Third Party Beneficiaries: On Opening Courthouse Doors*, 46 CINN. L. REV. 313, 329-31 (1977).

<sup>66</sup> OHIO AD. CODE § 3707-27-06 (1980).

<sup>67</sup> OHIO AD. CODE § 3701-27-05(B) (1980). This regulation states in no uncertain terms: "A mobile home park shall be constructed in accordance with approved plans." *Id.*

<sup>68</sup> *See* OHIO REV. CODE ANN. §§ 3733.01-.08 (Page 1980).

<sup>69</sup> *Id.* § 3733.03(B).

<sup>70</sup> *Id.* § 3733.031.

<sup>71</sup> *Id.* § 3733.031(B).

"may" result in a refusal to grant a license, or the suspension or revocation of a license.<sup>72</sup> This ultimate sanction would revoke the park operator's right to rent lots for mobile homes;<sup>73</sup> it would also force his present tenants to move from the park causing severe hardships to them. Thus, the local health districts have been reluctant to use this harsh sanction.

A review of the duties imposed by the Mobile Home Landlord-Tenant law emphasizes the complementary nature of the Public Health Council rules and the statutory responsibilities of the park operator. The initial requirement under section 3733.10(A) of the Ohio Revised Code<sup>74</sup> is that: "A park operator who is a party to a rental agreement shall: (1) Comply with the requirements of all applicable building, housing, health and safety codes which materially affect health and safety and rules of the public health council."<sup>75</sup> This does not necessarily create divergent local standards for park operators, as in the case of landlords under Ohio Revised Code section 5321.04.<sup>76</sup> Local governments have attempted to impose additional requirements upon mobile home parks. The Ohio courts, however, have resisted these efforts, finding that the Ohio legislature has preempted this regulatory field.<sup>77</sup> The pre-eminence of

<sup>72</sup> OHIO REV. CODE ANN. § 3733.05 (Page 1980). The statute gives discretion to the licenser of the local district to revoke the park operator's license. The agency, however, cannot decide in an arbitrary or capricious way whether to take this action. See *Citizens Organized to Defend the Government, Inc. v. Volpe*, 353 F. Supp. 520 (S.D. Ohio 1972).

<sup>73</sup> OHIO AD. CODE § 3701-27-02(B) (1980). The advantage of health council rules to further define park operator and tenant obligations should be viewed in the context that the tenants in question, the mobile homeowners, cannot readily apply the constructive eviction doctrine when faced with hazardous conditions.

<sup>74</sup> OHIO REV. CODE ANN. § 3733.10(A) (Page 1980).

<sup>75</sup> *Id.*

<sup>76</sup> See the discussion of community imposed landlord obligations in *Ohio Landlord-Tenant Reform Act*, *supra* note 31, at 885-93.

<sup>77</sup> *Noland v. Sharonville*, 40 Ohio App. 2d 7, 211 N.E.2d 90 (1964); *but see Anderson v. Brown*, 13 Ohio St. 2d 53, 233 N.E.2d 584 (1968). However, this may be open to question again because of OHIO REV. CODE ANN. § 3733.20 (Page 1980), which states in pertinent part:

No municipal corporation may adopt or continue in existence any ordinance that is in conflict with sections 3733.09 to 3733.20 of the Revised Code, or that regulates those rights and obligations of parties to a rental agreement that are regulated by sections 3733.09 to 3733.20 of the Revised Code. Sections 3733.09 to 3733.20 of the Revised Code *do not preempt any housing, building, health or safety codes of any municipal corporation.*

*Id.* (emphasis added).

By rules of statutory construction, the more recent legislation controls. It is arguable that the legislature has opened the door for local governments to enact codes stricter than state-mandated codes without being in conflict with the latter. There is no question that the state has not pre-empted a local government's power through zoning to prohibit the creation of a mobile home park in their jurisdiction. See *Trustees of Brunswick Township v. Riddell*, 58 Ohio Op. 380

these local codes is limited to those provisions that materially affect health and safety,<sup>78</sup> but not to the Public Health Council rules which are to apply in toto. Thus, the standards being imposed under this provision relate to state-wide codes, not those locally promulgated.<sup>79</sup>

The obligation of park operators to keep premises in a fit and habitable condition, while phrased similarly to the companion provision for apartment landlords, is somewhat confused by the conflicting definitions of "premises."<sup>80</sup> It may be argued that application of a standard of habitability usually associated with apartment rentals is inappropriate; yet the rights and remedies associated with the implied warranty of habitability<sup>81</sup> need not be lost because of this conflict. Health council

<sup>78</sup> The determination of material effect will rest on the seriousness of the condition and the duration of its existence. See *Lemle v. Breeden*, 51 Haw. 426, 462 P.2d 470 (1969); *Lund v. MacArthur*, 51 HAW. 473, 462 P.2d 482 (1969); *Pines v. Persson*, 14 Wis.2d 590, 111 N.W.2d 409 (1961).

<sup>79</sup> See *Greenlawn Trailer Sales Co. v. Board of Bldg. Standards*, 51 Ohio App. 2d 161, 367 N.E.2d 887 (1976). The advantages of specificity and a uniform standard that is provided by the incorporation of Public Health Council provisions may be diluted because these rules are interpreted by local health districts in Ohio's eighty-eight counties. There are significant numbers of references whose generality will allow broad interpretation. For example, the rules speak to a "pleasing and well-kept appearance" in discussing site requirements (OHIO AD. CODE § 3701-27-07 (1980)) or "safe, passable condition" in describing mobile home park streets (OHIO AD. CODE § 3701-27-09 (1980)). In addition, the licensor "may suspend" (OHIO REV. CODE ANN. § 3733.05 (Page 1980)) or make a "resurvey when in his opinion a resurvey is necessary. . . ." (OHIO REV. CODE ANN. § 3733.031 (Page 1980)) (emphasis added). In order to overcome the inconsistent enforcement of local agencies or their limited investigative capabilities, an administrative complaint may be necessary.

<sup>80</sup> OHIO REV. CODE ANN. § 5321.01(C) (Page 1981) defines residential premises as a dwelling unit; OHIO REV. CODE ANN. § 3733.01(C) (Page 1980) defines the same term to mean "a lot located within a house trailer park and the grounds, areas, and facilities contained within the house trailer park for the use of tenants generally or the use of which is promised to a tenant." *Id.*

<sup>81</sup> There are at least 20 jurisdictions which have expressly or impliedly embraced the implied warranty of habitability. See *Green v. Superior Court of City and County of San Francisco*, 10 Cal.3d 616, 517 P.2d 1185, 111 Cal. Rptr. 721 (1974); *Hall v. Municipal Court*, 10 Cal.3d 641, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974); *Hinson v. Delis*, 26 Cal. App. 3d 62, 102 Cal. Rptr. 661 (1972); *Tonetti v. Penati*, 48 A.D.2d 25, 367 N.Y.S.2d 804 (1975); *Morbeth Realty Co. v. Velez*, 73 Misc.2d 996, 343 N.Y.S.2d 406 (1973); *Amanuensis Ltd. v. Brown*, 65 Misc.2d 15, 318 N.Y.S.2d 11 (1971); *Lemle v. Breeden*, 51 Haw. 426, 462 P.2d 470 (1969); *Lund v. MacArthur*, 51 Haw. 473, 462 P.2d 482 (1969); *Boston Housing Authority v. Hemingway*, 363 Mass. 184, 293 N.E.2d 831 (1973); *King v. Moorehead*, 495 S.W.2d 65 (Mo. Ct. App. 1973); *Sargent v. Ross*, 113 N.H. 388, 308 A.2d 528 (1973); *Kline v. Burns*, 111 N.H. 87, 276 A.2d 248 (1971); *Timber Ridge Town House v. Dietz*, 133 N.J. Super. 577, 338 A.2d 21 (1974); *Berzito v. Gambino*, 63 N.J. 460, 308 A.2d 17 (1973); *Marini v. Ireland*, 56 N.J. 130, 265 A.2d 526 (1970); *Reste Realty Corp. v. Cooper*, 53 N.J. 444, 251 A.2d 268 (1969); *Jack Spring, Inc. v. Little*, 50 Ill.2d 351, 280 N.E.2d 208 (1972); *Mease v. Fox*, 200 N.W.2d 791 (Iowa 1972); *Glyco v. Schultz*, 62 Ohio Ops. 2d 227, 289 N.E.2d 919 (1972); *Presson v. Mountain States Properties Inc.*, 18 Ariz. App. 176, 501 P.2d 17 (1972); *Tucker v. Crawford*, 315 A.2d 787 (Del. 1974); *Gable v. Silver*, 258 So.2d 11 (Fla. App. 1972); *Queensbury v.* 14

rules can provide the standard that is appropriate to apply to a lot, grounds, areas and facilities that a park operator rents to his tenants. Failure to meet the standard should give rise to all the relief that the statute provides.<sup>82</sup>

As defined by health council rules, the size and location of the lot areas are prescribed on a sliding scale depending on the age of the park or the section of the park where it is located. Similarly, the distance between homes, access to public thoroughfares, and provision of paved parking, patio, pad and walkways are determined by the park construction date.<sup>83</sup> These requirements are both specific as to what is required and as to whom the responsibility accrues. Defining boundaries of the lot and the proper placement of the mobile home is the responsibility of the park operator.<sup>84</sup>

Tiedown provisions are legitimately a factor of fit and habitable premises. The rule requires the securing of the tie-downs of every mobile home manufactured with tie down equipment.<sup>85</sup> This provision makes the park operator responsible to the extent that he "shall require" this to be accomplished within 30 days after the placement of the home upon a lot.<sup>86</sup> The obligations of tenants do not include a provision regarding fit and habitable premises, but only for keeping that part of the premises that he occupies and uses safe and sanitary.<sup>87</sup> This wording suggests a maintenance responsibility only. The park operator's responsibility is broader, however, because he is required to "do whatever is reasonably necessary to put and keep the premises in a fit and habitable

Patrick, POVERTY L. REP. (CCH) ¶ 15,803 (El Paso County Court, Colo. 1972); Commonwealth v. Monumental Properties, Inc., 459 Pa. 450, 329 A.2d 812 (1974); Poisy v. Wyman, 83 Wash. 2d 22, 515 P.2d 160 (1973); Steele v. Latimer, 214 Kan. 329, 521 P.2d 304 (1974); Fritz v. Warthen, 298 Minn. 54, 213 N.W.2d 339 (1973).

<sup>82</sup> OHIO REV. CODE ANN. § 3733.10(B) (Page 1980).

<sup>83</sup> OHIO AD. CODE § 3701-27-08 (1980).

#### *Mobile Home Lots*

|  | prior to<br>1/1/61 | prior to<br>7/1/71 | after<br>6/30/71 |
|--|--------------------|--------------------|------------------|
| Lot area, in square feet                         | 1250               | 1800               | 3600             |
| Distances from public roads,<br>in feet          |                    | 10                 | 15               |
| Distances from park roads, in<br>feet            |                    | 5                  | 10               |
| Distance from lot line, in feet                  |                    | 5                  | 10               |
| Distance between sides of<br>homes, in feet      |                    | 15                 | 20               |
| Distance between ends/sides of<br>homes, in feet |                    | 10                 | 15               |
| Distance between ends of<br>homes, in feet       |                    | 5                  | 10               |

<sup>84</sup> OHIO AD. CODE § 3701-27-08(H) (1980).

<sup>85</sup> See also Ohio Building Code §§ BB-77-11 through BB-77-11.07.

<sup>86</sup> OHIO AD. CODE § 3701-27-082 (1980).

<sup>87</sup> OHIO REV. CODE ANN. § 3733.101(A)(1) (Page 1980).



condition."<sup>88</sup> The tenant's obligation to comply with health council rules<sup>89</sup> may appear to legitimize the transfer of this responsibility to tenants.<sup>90</sup> If this transfer of responsibility is done under the color of the tenant obligation but without prior notice, it may be possible to attack this practice as a deceptive act under Ohio Revised Code section 1345.02<sup>91</sup> or as an unconscionable act under section 1345.03<sup>92</sup> when the park operator is also the dealer selling the home to the tenant. It is arguable that failure to disclose necessary<sup>93</sup> and expensive items is deceptive per se under this statute.<sup>94</sup>

<sup>88</sup> OHIO REV. CODE ANN. § 3733.10(A)(2) (Page 1980) (emphasis added).

<sup>89</sup> OHIO REV. CODE ANN. § 3733.101(A)(3) (Page 1980).

<sup>90</sup> A common practice is for the park operator to be silent on this requirement when the mobile homeowner assumes occupancy, and then notify the tenant after 30 days that they are in violation of a health council rule. With the onus placed squarely upon the tenant, the park operator offers to rectify the problem by securing the tiedowns for a fee, often as high as \$300. This scenario is based on actual complaints of mobile homeowners in Ohio who utilized the statewide hotline operated by Housing Advocates, Inc. Seven complaints regarding forced purchases of tiedowns were received, including two where the park operator had previously cut them and still insisted that the mobile homeowner pay a fee for their replacement.

<sup>91</sup> Protection from unreasonable rules under OHIO REV. CODE ANN. § 3733.11 (Page 1980), or unconscionable clauses in a rental agreement under OHIO REV. CODE ANN. § 3733.16 (Page 1980), could provide relief from this park operator practice.

<sup>92</sup> See *Brown v. Market Development, Inc.*, 41 Ohio Misc. 57, 70 Ohio Ops. 113 (C.P. Hamilton Cty. 1974).

<sup>93</sup> It is not uncommon for an insurer to threaten policy cancellation in the absence of tiedowns. Following some tornado activity in Ohio during the summer of 1980, this threat was frequently reported to the statewide hotline.

<sup>94</sup> *Commonwealth v. Decotis*, No. 19535 in Equity (Mass. Super. Ct., Essex Cty., Dec. 4, 1973), was an action under the Massachusetts Consumer Protection Act against a mobile home park and sales organization. The court held that the imposition of a resale fee, which amounted to little more than a shakedown, violated the Act because of a lack of prior disclosure. The court held the resale fee per se unlawful in such circumstances, whereas it was unreasonable and unconscionable. A permanent injunction issued, prohibiting the charging of any resale fees and requiring restitution of all resale fees received since 1965. The court stated:

If there be a public policy to protect tenants who rent a home or an apartment from a landlord who owns both the land and the building thereon, how much more should the law protect the owner of a mobile home. . . . [U]nder the agreements introduced into evidence, the landlord can toy with the tenant on a month-to-month basis and is able to extract fees—some of which are never mentioned until demanded and others are in amounts which are outrageous and unconscionable.

*Id.* This case does not prohibit the park owner from simply requiring the tenant to move the home, and therefore may be a pyrrhic victory. For a further discussion of what constitutes unconscionability and its application where there is an absence of equitable bargaining power, see Note, *Landlord-Tenant Reform: Arizona's Version of the Uniform Act*, 16 ARIZ. L. REV. 91 (1974), and discussion at notes 218-23 *infra* and accompanying text.

The health council rules governing mobile home connections<sup>95</sup> for sewerage may further define the park operator's responsibility relating to the fitness and habitability of the premises, making delegability questionable. The rule requires the park operator "to supervise the installation of the sewer connection"<sup>96</sup> to avoid surface discharge or odor. The statement that park operators need only "supervise" may imply that the duty to install may be transferred to the mobile homeowner, but the obligation to install should be that of the park operator only.

The responsibility of a landlord to maintain common areas is a function of his control.<sup>97</sup> The range of responsibilities for a park operator run from site conditions to insect control. The only issue is the standard to be applied to this duty to keep the common premises in a safe and sanitary condition.<sup>98</sup> Again, the incorporation of health council rules provides extensive and specific requirements that can supply that standard. The health council rules that may reasonably be considered as factors regulating safe and sanitary conditions include the requirement that "the park site is to be well drained, remote from public hazards, and present a pleasing and well-kept appearance."<sup>99</sup>

Like the provisions governing lot area, there is an adjustable standard for paving that accommodates the age of the mobile home park.<sup>100</sup> Paved streets after June 30, 1971, have minimum width requirements that range from twenty feet if they are one way streets with parking on one side, to thirty-five feet if they are two way streets with parking on both sides. Another part of this rule directs that these streets "shall be maintained in a safe, passable condition at all times."<sup>101</sup> As under Ohio Administrative Code section 3701-27-08,<sup>102</sup> there is no declaration that

<sup>95</sup> OHIO AD. CODE § 3701-27-19 (1980).

<sup>96</sup> *Id.* (emphasis added).

<sup>97</sup> Under the common law the landlord's duty regarding common areas arose from his duty regarding those portions of the premises over which he exercises control. In premises occupied by two or more tenants, the law inferred this control over portions of the premises used in common by the tenants. *Cooper v. Roose*, 151 Ohio St. 316, 85 N.E.2d 545 (1949).

<sup>98</sup> OHIO REV. CODE ANN. § 3733.10(A)(3) (Page 1980).

<sup>99</sup> OHIO AD. CODE § 3701-27-07 (1980).

<sup>100</sup> OHIO AD. CODE § 3701-27-09 (1980). The provisions can be summarized as follows:

| <i>Streets, Walkways, Auto Parking</i>       |                    |                    |                  |
|--|--------------------|--------------------|------------------|
|  | prior to<br>1/1/61 | prior to<br>7/1/71 | after<br>6/30/71 |
| Lot shall abut street by this width, in feet | 20                 | 25                 | paved            |
| Paved patio of 100 square feet               |                    |                    | x                |
| Paved pad, strips or piers                   |                    |                    | x                |
| Paved walkway of two feet                    |                    |                    | x                |
| On lot parking spaces for two cars           |                    |                    | x                |

<sup>101</sup> OHIO AD. CODE § 3701-27-09(J) (1980).

<sup>102</sup> OHIO AD. CODE § 3701-27-08 (1980).

this maintenance responsibility is that of the park operator. To the extent that most of the above relates to common areas, however, there should be no argument regarding park operator responsibility. In relation to safety, park streets must be lighted at night by not less than three-tenths foot candle of artificial light.<sup>103</sup> Providing for these street lights is the park operator's responsibility.<sup>104</sup>

Plumbing facilities are to be provided if homes lacking such facilities are accommodated in the park. They are to be well lit and maintained and located within two hundred feet of these homes, and there is to be one for every fifteen mobile homes lacking complete plumbing facilities. Where laundry facilities are provided by the park operator, there need only be one such facility, though separate from the toilet, lavatory or bath fixtures.<sup>105</sup>

There are several health council rules relating to controlling vermin. For example, when insects are present, windows and doors of all park buildings must be screened; the park is to be kept reasonably free of flies and mosquitoes at all times. Also, the park operator must remove conditions fostering rats and mice.<sup>106</sup>

After June 30, 1971, recreation space must consist of at least eight percent (8%) of the gross mobile home park area. When provided, facilities and buildings for recreation must meet applicable state and local regulations, be appropriate for the intended use and be properly operated and maintained.<sup>107</sup>

The determination of whether the level of maintenance is satisfactory for all these facilities is at the discretion of the local health district.<sup>108</sup> This permits flexibility concomitant with promoting differing standards depending on the agency acting as the licensor.

A park operator's responsibility for provision and maintenance of essential utilities is part of the dominance he enjoys in this landlord-tenant relationship. The degree to which the park operator's responsibility limits or eliminates government regulation is cause for concern.

Public health council rules exist for regulating the water supply systems,<sup>109</sup> including outlets.<sup>110</sup> Outlet requirements include size of pipe,<sup>111</sup> and adequate protection against freezing and location of lines;<sup>112</sup> provisions for the sewage system are similar.<sup>113</sup> The rules governing

<sup>103</sup> OHIO AD. CODE § 3701-27-10 (1980).

<sup>104</sup> OHIO AD. CODE § 3701-27-24 (1980).

<sup>105</sup> OHIO AD. CODE §§ 3701-27-16, 3701-27-18 (1980).

<sup>106</sup> OHIO AD. CODE § 3701-27-22 (1980).

<sup>107</sup> OHIO AD. CODE § 3701-27-26 (1980).

<sup>108</sup> OHIO AD. CODE § 3701-27-27 (1980).

<sup>109</sup> OHIO AD. CODE § 3701-27-12 (1980).

<sup>110</sup> OHIO AD. CODE § 3701-27-13 (1980).

<sup>111</sup> Water service pipes installed before June 1, 1979, must be one-half inch in diameter, and after that date, three-quarter of an inch in diameter. *Id.*

<sup>112</sup> OHIO AD. CODE § 3701-27-14 (1980).

<sup>113</sup> OHIO AD. CODE § 3701-27-18 (1980).

solid waste, including its collection and storage, are very detailed regarding containers and frequency of collection.<sup>114</sup> Electrical systems must satisfy the National Electric Code, local codes and approved plans.<sup>115</sup>

The responsibilities of the park operator can result in additional profit for him and further loss of rights of the mobile homeowner by removing from the state regulatory agencies supervision over utility service. Park operators frequently require their tenants to access heating oil and similar necessities from a park-provided source.<sup>116</sup> This effectively removes any state control over rates charged, leading to possible abuse.<sup>117</sup> The park operator's control over access to the park itself can deny or obstruct access by competing fuel suppliers. This increasing dependency of mobile homeowners on the park operator through the supply of essential fuel creates an additional barrier to registering complaints or forming tenant organizations.

Where the law provides some protection against arbitrary increases in fees, charges for basic fuels and their increases may be subject to these same restrictions. Some relief from abuse may be found through the thirty (30) day notice requirement of section 3733.11 of the Ohio Revised Code<sup>118</sup> governing rental agreements, or by application of the Consumer Sales Practice Act, section 1345.03,<sup>119</sup> relating to unconscionable sales practices. The park operator's right to make charges may be contractually limited if the agreement with the utility company denies the park owner the right to resell the electricity at a profit.<sup>120</sup> This practice may also violate federal or state antitrust laws.<sup>121</sup>

The provision dealing with park operator abuse of right of access under the Mobile Home Tenant-Landlord Act, by its similarity to the provision for apartments, creates confusion over the extent of authority possessed by the park operator.<sup>122</sup> The park operator is required by

<sup>114</sup> Containers must be rust-resistant, watertight, nonabsorbant and easily washable. Their number must be sufficient to hold all solid wastes accumulated between collections. Collections must be at least once each week. OHIO ADM. CODE § 3701-27-20 (1980).

<sup>115</sup> OHIO AD. CODE § 3701-27-20 (1980).

<sup>116</sup> In Ohio the rates that an operator of a mobile home park charges his tenants for electricity which he remeters and resells to them are not subject to the jurisdiction of the state public services commission.

<sup>117</sup> OHIO REV. CODE ANN. § 3733.11 (Page 1980), prohibits operators from requiring a tenant to use the services of the park operator or any other specific persons for the purchase of equipment or the installation of appliances or the mobile home itself, but does not specifically limit a park operator from creating a monopoly over the supply of an essential utility.

<sup>118</sup> OHIO REV. CODE ANN. § 3733.11 (Page 1980).

<sup>119</sup> OHIO REV. CODE ANN. § 1345.03 (Page 1979).

<sup>120</sup> See *LaNasa v. New Orleans Public Service*, 223 La. 548, 66 So.2d 332 (1953).

<sup>121</sup> *C. F. Ware v. Trailer Mart, Inc.*, 623 F.2d 1150 (6th Cir. 1980).

<sup>122</sup> OHIO REV. CODE ANN. § 3733.10 (Page 1978), Obligations of park operator, uses the term "residential premises." Section 3733.101, Obligations of tenant, uses the term "premises." Section 3733.01, Definitions, defines residential premises as to mean a place located within a house trailer park. . . . *Id.*

statute not to abuse his right of access. The notice requirements and emergency provisions under this section refer to "entry onto the residential premises,"<sup>123</sup> and seem to recognize the proposition that the object is only a piece of land and not the structure located upon it, as the definition under Ohio Revised Code section 3733<sup>124</sup> specifies. The corollary provision under section 3733.101,<sup>125</sup> Obligations of Tenant, further extends access of the park operator to enter the mobile home for the purpose of inspecting utility connections. The limited purpose of this authority should be noted; in practice, this provision is often used by park operators to demand that tenants provide them with keys to their owned units, regardless of the limits set by the definition of residential premises in the statute. This is not mandated under the statute, and a park operator has no right conferred onto him by this law to require a key to gain entrance to the mobile homeowner's property.

The statutory right of access, as provided in both sections 5321.04 and 3733.10 of the Ohio Revised Code,<sup>126</sup> can be arguably construed to alter the common law "escape clause" for landlord liability for the condition of the premises. In the absence of landlord control or possession of the premises, the courts have concluded that there is no corresponding responsibility to make repairs.<sup>127</sup> The actions of the General Assembly have brought into question the common law immunity in tort for park operators.<sup>128</sup>

### C. *Obligations of Tenants*

Taken as a whole, the section of the law on the obligations of tenants reflects sentiments similar to those of the framers of the apartment landlord-tenant law. They tend to mirror in a like fashion many of the obligations of park operators while complementing others. This interlocking design can contribute to some transference of responsibility but, more typically, park operators jealously protect all their duties so as to limit tenant interference with the operation of the park. The similarity in the statutory scheme of tenant obligations reflects the pro-

<sup>123</sup> OHIO REV. CODE ANN. § 3733.10(A)(6) (Page 1980).

<sup>124</sup> OHIO REV. CODE ANN. § 3733.01 (Page 1980).

<sup>125</sup> OHIO REV. CODE ANN. § 3733.101 (Page 1980).

<sup>126</sup> OHIO REV. CODE ANN. §§ 5321.04, 3733.10 (Page 1981).

<sup>127</sup> See, e.g., *Burdick v. Cheadle*, 26 Ohio St. 393, 397 (1875). See also *Shindelbeck v. Moon*, 32 Ohio St. 264, 275 (1877).

<sup>128</sup> This issue was resolved regarding the apartment landlord-tenant act. The Ohio Supreme Court, in *Shroades v. Rental Homes*, 68 Ohio St. 2d 20 (1981), held that a landlord is liable for injuries sustained on the residential premises caused by the landlord's failure to meet his duties under Ohio Rev. Code § 5321.04. The similarities between Ohio Rev. Code §§ 5321.04 and 3733.10 would lead one to conclude that park operators will also be liable for any tortious conduct. See notes 185-90 *infra* and accompanying text.

position that mobile homeowners and the apartment tenants have similar interests. Primary among these interests is to define their responsibilities in order to delimit those actions or inactions for which the landlord may deprive them of use of the property.<sup>129</sup>

The specific duties of tenants, when correlated with those of the landlord, should not be interpreted to remove the primary responsibility from the landlord or park operator. For example, the tenant's responsibility to "keep that part of the premises that he occupies and uses<sup>130]</sup> safe and sanitary"<sup>131</sup> should not be held equivalent to the park operator's duty to "make all repairs and do whatever is reasonably necessary to put and keep the premises in a fit and habitable condition."<sup>132</sup> Similarly, the tenant's obligation to "dispose of all rubbish, garbage, and other waste in a clean, safe, and sanitary manner"<sup>133</sup> cannot be compared to health council requirements regarding solid waste collection and storage which describe park operator responsibility for the adequacy and type of container and frequency of collection.<sup>134</sup>

The obligation of tenants under this section to avoid damaging the premises or tolerating any other person committing such acts<sup>135</sup> simply codifies the common law principle of waste. The responsibility of returning the premises to the landlord in a state similar to that which existed when the property was conveyed in order to avoid liability<sup>136</sup> is simply raised to a statutory level. It differs from common law principles by ignoring any improvements (ameliorative waste)<sup>137</sup> and creating tenant

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<sup>129</sup> "By defining both the landlord's and tenant's responsibilities, the proposed statute protects both parties. It gives each party notice of his own as well as the other party's duties under the statute." See *Protection for Mobile Home Owners*, *supra* note 29, at 118.

<sup>130</sup> It has been argued that the use of the conjunctive "and" limits this duty to those premises that are both occupied and used by the tenant, thus emphasizing the exclusion of common areas from tenant responsibility. See *Ohio Landlord and Tenant Reform Act*, *supra* note 31, at 899.

<sup>131</sup> OHIO REV. CODE ANN. § 3733.101(A)(1) (Page 1980).

<sup>132</sup> *Id.* § 3733.10(A)(2).

<sup>133</sup> *Id.* § 3733.101(A)(2).

<sup>134</sup> OHIO AD. CODE § 3701-27-20 (1980).

<sup>135</sup> OHIO REV. CODE ANN. § 3733.101(A)(4) (Page 1980).

<sup>136</sup> See *Ohio Landlord and Tenant Reform Act*, *supra* note 31, at 899. A tenant is under continuing obligation to repair where his acts amount to voluntary waste and involve a breach of the obligation to use the premises in a husband-like manner. See *Rammell v. Bulen*, 51 Ohio Law Abs. 125, 126, 80 N.E.2d 167, 168 (Ohio App. 1948).

<sup>137</sup> Such a recognition could be used to guarantee a tenant's equity if an eviction forces him to leave the park before he succeeds in selling the home, thereby allowing the improvements to revert to the possession or benefit of the park operator. This would be a more reasonable response than forcing the home to be moved, which could cause damage or add exit fees to the homeowners existing economic hardship.

liability for those acts committed by "any other person who is on the premises with his permission."<sup>138</sup>

The provision of the statute which charges the mobile homeowner to comply with "applicable state and local housing, health, and safety codes, rules of the public health council and rules of the house trailer park"<sup>139</sup> appears formidable on its face. Upon careful review, however, it can be interpreted as invoking a monitoring role for the tenant,<sup>140</sup> certainly not one of primary responsibility for compliance. The fact that compliance requirements are imposed for only those codes and rules that are applicable, of which none generally apply to areas over which mobile home tenants have control, relieves tenants from such duties.<sup>141</sup> In like fashion, the health council rules mandate no specific responsibility for tenants. The logical deduction is that tenant obligations only require tenants to do nothing to interfere with the park operator's ability to comply. Actual experience, however, may reveal that the more typical role of tenants is pressing landlords for compliance, invoking the assistance of health districts or seeking relief from the court system when all else fails.

Rules of the mobile home park by their inclusion in the statute are raised to equivalency of housing, health and safety codes and health council rules. These rules cannot be ignored by a claim of their lacking applicability. Their specific incorporation gives the park operator an almost private legislative role to impose restrictions which may range from who may visit the mobile homeowner and in what numbers, how to dry clothes and whether children will be tolerated and to what extent.<sup>143</sup>

<sup>138</sup> See *Ohio Landlord and Tenant Reform Act*, *supra* note 31, at 898. The right to forfeit a lease for the commission of waste is recognized. See Annot., 3 A.L.R. 672 (1919).

<sup>139</sup> OHIO REV. CODE ANN. § 3733.101(A)(3) (Page 1978).

<sup>140</sup> This oversight role cannot be performed unless the landlord is restricted in his ability to terminate the tenant's possession of the property. The rent escrow mechanism reflects the legislature's recognition of the necessity for the tenant to remain in possession of the premises if they are going to succeed in prodding the landlord to meet his obligations. See *Thrash v. Hill*, 63 Ohio St. 2d 178, 407 N.E.2d 495 (1980).

<sup>141</sup> The fact that landlord duty to comply is limited to those items that "materially affect health and safety" and no similar modifier exists under tenant obligations is peculiar. Establishing tenant duties by statute is an equity-creating mechanism, and the purpose would be defeated by extending tenant responsibility to those rules and codes that landlords can ignore because they do not materially affect health and safety. Establishing additional grounds for landlord action either in claiming damages or terminating rental agreements would further conflict with the object of this reform statute. See *Protection for Mobile Homeowners*, *supra* note 29, at 118.

<sup>142</sup> See generally OHIO REV. CODE ANN. §§ 3733 *et seq.* (Page 1980).

<sup>143</sup> In one case reported to the Housing Advocates, Inc. Hotline, the park rules set a limit to the combined ages of the children living in the mobile home park. However, these rules are limited by both OHIO REV. CODE ANN. § 3733.11(C) (Page 1980) (requiring them not to be "unreasonable, arbitrary, or capricious") and OHIO REV. CODE ANN. § 3733.16 (Page 1980) (Page 1980) ("unconscionability").

The codification of common law under this section continues with the incorporation in both the 1974 law and the mobile home statute of the obligation to respect a neighbor's right to "peaceful enjoyment of the premises."<sup>144</sup> Unlike apartment tenants, mobile homeowners do not share walls, but their homes may be as close as five feet when placed end to end.<sup>145</sup> Unlike other sections of the statute that attempt to define responsibilities and rights of landlords vis-a-vis tenants, this provision would appear to establish a bridge between tenants; the remedy is in the hands of both fellow tenants and the park operator.<sup>146</sup> The design provides an action in nuisance which requires the disturbance to be significant to reach the threshold of liability and so defines the extent of injury suffered by the plaintiff.<sup>147</sup>

The right of a park operator to enter the privately owned mobile home is limited to his request to inspect utility connections.<sup>148</sup> This access provision is consistent with his responsibilities under public health council rules. Electrical systems,<sup>149</sup> the sewage connector<sup>150</sup> and water service pipes<sup>151</sup> are responsibilities assigned to the park operator under that regulatory scheme.

The park operator's statutory right of access to the premises<sup>152</sup> is phrased "enter onto the premises,"<sup>153</sup> in contrast to the apartment landlord provision that requires his right to "enter into the dwelling unit."<sup>154</sup> With the definition clearly speaking to "a lot located within a house trailer park,"<sup>155</sup> there is no question that the park operator is clearly limited in his access to the tenant's mobile home. This statutory provision and its implied limitation is less clearly defined under the obligation of the park operator;<sup>156</sup> there, the meaning of right of access to "enter onto residential premises"<sup>157</sup> is in reality ignored and abused

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<sup>144</sup> OHIO REV. CODE ANN. § 3733.101(A)(5) (Page 1980).

<sup>145</sup> If the park was constructed prior to July 1, 1971, the five foot distance is acceptable under health council rules. OHIO AD. CODE § 3701-27-08(D) (1979).

<sup>146</sup> A park operator may sue for breach of this "quiet enjoyment" provision by OHIO REV. CODE ANN. § 3733.101(C) (Page 1980), and/or fellow tenants have this same right under OHIO REV. CODE ANN. § 3733.14 (Page 1980).

<sup>147</sup> Conduct of a tenant or other persons on the premises with his consent must result in an injury which is greater than "a trifling annoyance, inconvenience, or discomfort." See *Antonik v. Chamberlain*, 81 Ohio App. 465, 477, 78 N.E.2d 752, 759 (1947).

<sup>148</sup> OHIO REV. CODE ANN. § 3733.101(B) (Page 1980).

<sup>149</sup> OHIO AD. CODE § 3701-27-24 (1979).

<sup>150</sup> OHIO AD. CODE § 3701-27-19 (1979).

<sup>151</sup> OHIO AD. CODE § 3701-27-13 (1979).

<sup>152</sup> For definitions of premises as they are applied to the Ohio Landlord-Tenant Law and the Landlord-Tenant Law for House Trailer Parks, see note 80 *supra*.

<sup>153</sup> OHIO REV. CODE ANN. § 3733.101(B) (Page 1980).

<sup>154</sup> OHIO REV. CODE ANN. § 5321.05(B) (Page 1981).

<sup>155</sup> OHIO REV. CODE ANN. § 3733.01(L) (Page 1980).

<sup>156</sup> OHIO REV. CODE ANN. §§ 3733.10(5), (6) (Page 1980).

<sup>157</sup> *Id.*



when the unsophisticated mobile homeowner is confronted by a demand for blanket inspection of his home without realizing the strict limitations on access imposed by the statute.

#### IV. AVAILABLE REMEDIES

##### A. Remedies of the Park Operator

The violation by a mobile homeowner of his obligations gives rise to several legal options which may be taken by the park operator. These remedies include recovering any actual damages<sup>158</sup> resulting from the violation, injunctive relief to gain access to the mobile home or premises, termination of the rental agreement, maintaining an action in forcible entry and detainer and, if successful in the litigation, receiving reasonable attorney fees.<sup>159</sup>

The statutory provision for damages simply codifies common law principles that a party breaching a contract may be held liable for damages proximately caused and suffered as a result of the breach.<sup>160</sup> The legislature placed a restriction on the type of damages that can be awarded in this type of action to actual or compensatory damages, rather than including punitive damages. This restriction places the burden on the park operator to show that the injuries were both foreseeable from<sup>161</sup> and proximately caused by<sup>162</sup> the breach of the contract. It does not provide any further relief not already available to landlords prior to the enactment of the new statute.

Injunctive relief is specifically limited to ordering a noncomplying tenant to permit the park operator's reasonable access to the mobile home.<sup>163</sup> The utility of this remedy for a park operator is questionable.

<sup>158</sup> This is based on both OHIO REV. CODE ANN. §§ 3733.101(C) and 3733.14 (Page 1980). An identical provision is found in OHIO REV. CODE ANN. § 5321.12 (Page 1981). The Ohio Supreme Court has interpreted § 5321.12 as giving rise to a statutory tort. See *Shroades v. Rental Homes*, 68 Ohio St. 2d 20, 25 (1981).

<sup>159</sup> OHIO REV. CODE ANN. § 3733.101(C) (Page 1980).

<sup>160</sup> See generally OHIO REV. CODE ANN. § 3733.14 (Page 1980).

<sup>161</sup> Depending on whether the analysis of the statute is based on contract or tort, the theory of recovery can have a substantial impact on the award of damages. If violation of the statute is thought of as a statutory tort then the mobile homeowner could become liable for all damages proximately resulting from the breach. On the other hand, judicial interpretation of the statute based on contract principles imposes liability for only the injuries which were reasonably foreseeable at the time the illegal acts occurred. *Thrash v. Hill*, 63 Ohio St. 2d 178, 407 N.E.2d 495 (1980), overruled on other grounds by *Shroades v. Rental Homes*, 68 Ohio St. 2d 20 (1981), supports the latter analysis limiting the types of injuries that can be awarded to a landlord to those for damages to property or rents owned and due. See *Globe Ref. Co. v. Landa Cotton Oil Co.*, 190 U.S. 540 (1903); *Deutsch v. Hoge*, 94 F. Supp. 33 (N.D. Ohio 1949), *aff'd*, 185 F.2d 259 (6th Cir. 1950).

<sup>162</sup> See note 161 *supra* and accompanying text.

<sup>163</sup> See notes 148-58 *supra* and accompanying text.

Assuming that the situation warrants litigation, one would doubt that a landlord would stop at requesting injunctive relief rather than seeking to regain possession of the property by filing a forcible entry and detainer action.

In order to obtain injunctive relief under the statute, the park operator would have to prove the following: (1) the probability of his succeeding on the merits of the case; (2) that the mobile homeowner's refusal to permit access to his unit or its residential premises is causing irreparable injury to the park operator; and (3) the injunctive relief sought is needed to preserve the status quo.<sup>164</sup> The court, in considering a request for an injunction, must balance the equities involved in this matter.<sup>165</sup> It should take into account the right of privacy of the mobile homeowner in light of the limited access provided under the statute to the park operator. Any doubts should be weighed in favor of refusing to issue an injunction which would require a person to open his home to another person.

The statute establishes three procedures by which a park operator could terminate a rental agreement.<sup>166</sup> The basis for determining which procedure to follow depends on whether the decision to terminate is based on either the mobile homeowner's noncompliance with any statutory duty that materially affects health and safety or failure to pay rent.<sup>167</sup> Assuming that the noncompliance materially affects health and safety, the park operator must first deliver a written notice to the tenant describing the conduct which constitutes the noncompliance and informing him that failure to correct the condition will cause termination of the lease.<sup>168</sup> The statute mandates that the notice state a time when

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<sup>164</sup> *Great Southern Fire-Proof Hotel Co. v. McClain*, 3 Ohio N.P. 247, 4 Ohio Dec. Repr. 309 (1896).

<sup>165</sup> *Arthur Murray Dance Studios v. Witter*, 105 N.E.2d 685 (Ohio 1952); *see Hubman Supply Co. v. Irvin*, 119 N.E.2d 152 (Ohio 1953).

<sup>166</sup> OHIO REV. CODE ANN. § 3733.13 (Page 1980).

<sup>167</sup> OHIO REV. CODE ANN. § 3733.13 (Page 1980), provides that:

If the tenant fails to fulfill any obligation imposed upon him by Section 3733.101 [3733.10.1] of the Revised Code that materially affects health and safety, the park operator may deliver a written notice of this fact to the tenant specifying the act and omission that constitutes noncompliance with such provisions and that the rental agreement will terminate upon a date specified in the written notice not less than thirty days after receipt of the notice. If the tenant fails to remedy the condition contained in the notice, the rental agreement shall then terminate as provided in the notice.

*Id.*

<sup>168</sup> The reference to "may" in OHIO REV. CODE ANN. § 3733.13 (Page 1980), does not give the park operator a choice not to provide written notice before terminating an agreement. The "may" relates back to the park operator's option of deciding to begin the statutory procedure necessary for termination of the lease. If the park operator desires to terminate the agreement, he must follow the procedures set forth in the statute. Such a warning period also applies to oral leases. *See Holiday Plaza Inv. Corp. v. Clark*, 306 So.2d 161 (Fla. 1975).

failure to correct the acts or omissions will cause termination of the agreement; this time limit must be at least thirty days from the date of receipt of the notice.<sup>169</sup>

Only when the mobile homeowner fails to correct the condition in a timely fashion after proper notice can the agreement be terminated. Termination of the agreement, however, does not give the park operator the right to use self-help methods to force the mobile homeowner from the site.<sup>170</sup> A refusal of the mobile homeowner to leave makes him a hold-over tenant, but the park operator must still institute a forcible entry and detainer action to regain possession of the premises or to recover back rent.<sup>171</sup>

The second set of procedures relates to the failure by the mobile homeowner to meet his obligations to pay the rent in a timely fashion.<sup>172</sup> The statute provides that default in rent is the basis for terminating the rental agreement in a summary fashion.<sup>173</sup> The written notice requirement is limited to the three day statutory requirement mandated before an action for forcible entry and detainer can be filed by the park operator.<sup>174</sup> The statute, however, recognizes the right of a tenant to file counterclaims based on the park operator's violation of either statutory or contract rights.<sup>175</sup>

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<sup>169</sup> OHIO REV. CODE ANN. § 3733.13 (Page 1980).

<sup>170</sup> All forms of self help by park operators are prohibited by OHIO REV. CODE ANN. § 3733.17(A) (Page 1978), which states that:

No park operator of residential premises shall initiate any act, including termination of utilities or services, exclusion from the premises, or threat of any unlawful act, against a tenant, or a tenant whose right to possession has terminated, for the purpose of recovering possession of residential premises, other than as provided in Chapters 1923, 3733 and 5303 of the Revised Code.

See also *Ohio Landlord and Tenant Reform Act*, *supra* note 31, at 907-09.

<sup>171</sup> OHIO REV. CODE ANN. § 3733.17(B) (Page 1980). This section also prohibits park operators from seizing the mobile homeowner's furnishings or possessions for the purpose of recovering rent owed without an order issued by the appropriate court. In New York the alternative choice to collect past due rent in lieu of eviction is legal. N.Y. REAL PROP. LAW § 233 (McKinney). See *Valley Forge Village v. Bromberger*, 86 Misc.2d 227, 382 N.Y.S.2d 640 (1976).

<sup>172</sup> OHIO REV. CODE ANN. § 3733.911(A)(1) (Page 1980). This section authorizes the park operator to bring a forcible entry and detainer action whenever "the tenant is in default in the payment of rent." *Id.*

<sup>173</sup> OHIO REV. CODE ANN. § 1923.02 (Page 1980).

<sup>174</sup> *Id.* § 1923.04.

<sup>175</sup> OHIO REV. CODE ANN. § 3733.091(B) (Page 1980), states: "The maintenance of an action by the park operator under this section does not prevent the tenant from recovering damages for any violation by the park operator of the rental agreement or of section 3733.10 of the Revised Code." *Id.* It is possible to defeat an action in forcible entry and detainer by using this method. Under OHIO REV. CODE ANN. § 1923.061 (Page 1980), if the tenant's award of damages equal or are greater than the rent owed, the action will be dismissed in the favor of the mobile homeowner. This provision codifies Ohio common law which recognizes

The third procedure relates to terminating the lease when the violation does not materially affect health or safety. It is open to question whether the legislature intended that a park operator could have the rental agreement terminated for a violation of the statute or rental agreement which does not materially affect health or safety. There is no provision of the law specifically relating to these circumstances. It would, however, be anomalous to argue that the Ohio General Assembly would give mobile homeowners who are seriously violating the law rights superior to those persons in technical or minor breaches of it. Such an interpretation would not implement the legislature's mandate to liberally construe this statute.<sup>176</sup> Furthermore, courts have refused to evict persons for trivial breaches in similar circumstances.<sup>177</sup>

A recent decision by the Lucas County Court of Appeals interpreted Ohio's forcible entry and detainer statute as prohibiting park operators from evicting mobile homeowners without good cause. In *Ward v. Allen*,<sup>178</sup> the Ohio Court of Appeals for the Sixth District interpreted sec-

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the right of a tenant to raise defenses of "set-off" in forcible entry and detainer actions. *Kuhn v. Griffin*, 3 Ohio App. 2d 195 (Ohio App. 1964). In mobile home cases in other states any defense available under law may be raised against the proceedings. See *Bowles v. Blue Lake Development Corp.*, 504 F.2d 1094 (5th Cir. 1974); *McCall v. Fickes*, 556 P.2d 535 (Alaska 1976).

<sup>176</sup> See notes 26 and 27 *supra* and accompanying text. See also *Wishnek v. Gulla*, 114 N.E.2d 914 (Cuy. Cty. C.P. 1953).

<sup>177</sup> *McNeece v. Wood*, 204 Cal. 280, 285, 267 P. 877, 880 (1928). An unreported case under Chapter 5321, *Fitzpatrick Realty v. Wilkey*, No. 78 CVG 8102, Slip Op. (Dayton Mun. Ct. 1979), states:

We are thrown, then, back to consideration of the case under general contract principles. In order for a breach by a promisor to work a discharge of the promisee (and thus entitle a landlord/promisee to eviction), the breach must be material. I specifically find Defendant's alleged breach here is not material enough to work a discharge.

*Id.* at 2. Ohio Courts have a powerful tool under the new statute to balance the equities to avoid an unjust result. Under OHIO REV. CODE ANN. § 3733.16, the Court may refuse to enforce or apply a clause or the whole rental agreement if as a matter of law it finds that to do so would be unconscionable. This is especially useful in light of the economic hardship that would occur to a mobile homeowner forced to relocate his unit. See notes 218-23 *infra* and accompanying text.

<sup>178</sup> *Ward v. Allen*, No. L-80-388 (6th App. Dist 1981). The court, in requiring good cause for eviction, stated:

Upon our review of the record we find however that the trial court did err in granting plaintiff-appellee judgment for possession. This landlord's complaint was brought pursuant to the provisions of Ch. 1923 of the Revised Code. The provisions of R.C. 1923-02, effective when this action was filed and heard, provided in part as follows:

"(A) Proceedings under Chapter 1923 of the Revised Code may be had:

- (10) Against house trailer tenants who have defaulted in the payment of rent or breached the terms of a rental agreement with a house trailer park operator."

Our examination of the record indicates that plaintiff-appellee, in filing

tion 1923.02(A)(10) as requiring that a park operator must allege in any complaint requesting restitution of the premises that the mobile homeowner had either defaulted in the payment of rent or breached the terms of the rental agreement, to state a claim under Chapter 1923. If other courts adopt this sagacious analysis of Chapter 1923 then Ohio will have one of the strongest provisions in the nation protecting mobile homeowners from arbitrary eviction attempts.

Recovery of the premises is the most devastating remedy available to the park operator and most clearly reflects the imbalance of power that exists in this area of law. In many states the legislatures have specifically enumerated the basis for requesting an eviction.<sup>179</sup> The Florida statute contains provisions similar to most states that have adopted this method. It provides that a mobile homeowner may not be evicted except for the following reasons: (a) Nonpayment of rent; (b) Conviction of a violation of some federal or state law or local ordinance which may be deemed detrimental to the health, safety or welfare of other dwellers in the mobile home park; (c) Violation of any reasonable rule or regulation established by the park owner or operator, provided the mobile homeowner received written notice of the grounds upon which he is to be evicted at least thirty days prior to the date he is required to vacate; or (d) Change in the use of land comprising the mobile home park provided all tenants are given at least ninety days notice or longer if provided for in a valid lease, of the projected change of use and of their need to secure other accommodations.<sup>180</sup>

Ohio has not enacted a similar provision containing an unambiguous set of conditions warranting an eviction action. The present system has resulted in inconsistent rulings requiring unnecessary litigation.<sup>181</sup>

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this action did not allege that defendant-appellant had defaulted in the payment of rent or had breached the terms of the rental agreement. Instead plaintiff-appellee alleged that defendant-appellant was holding over after receiving notice to vacate the trailer lot. Therefore, we find that the provisions of Ch. 1923 are inapplicable in the case sub judice. The trial court erred in issuing an order for possession.

*Id.*

<sup>179</sup> FLA. STAT. ANN. § 83.75 (West 1981); MASS. GEN. LAWS ANN. ch. 140, § 32J (West Supp. 1975); *see also* MINN. STAT. ANN. § 327.44 (West Supp. 1979); N.H. REV. STAT. ANN. § 205-A:3 (Supp. 1979). Such enumeration does not impair property rights or contract rights and makes the lease and other prior laws subservient to the eviction provisions. *See Palm Beach Mobile Homes, Inc. v. Strong*, 300 So.2d 881 (Fla. 1974).

<sup>180</sup> FLA. STAT. ANN. § 83.759 (West 1981).

<sup>181</sup> The present system permits the filing of an eviction on any ground except in retaliation for certain protective conduct under OHIO REV. CODE ANN. § 3733.09 (Page 1980). However, as previously discussed, the statute sets forth several additional defenses like set-offs and unconscionability which can defeat an eviction action. Further, Ohio courts have consistently recognized the right of a judge to permit all equitable defenses in these matters. *See Lauch v. Monning*, 15 Ohio App. 2d 112, 239 N.E.2d 675 (1968); *Kuhn v. Griffin*, 3 Ohio App. 2d 195, 209

Under the statute, attorney fees can be awarded to park operators only in actions filed requesting monetary awards or bad faith rent deposits.<sup>182</sup> The purpose of limiting the recovery of fees to these types of actions arguably reflects the concern of the legislature to prevent attorney fees from being used as a threat of sanction against mobile homeowners attempting to exercise their rights. This may also be the reason that the Ohio legislature prohibited the rental agreement from containing any provision for awarding attorney fees for either a park operator or mobile homeowner.<sup>183</sup>

### B. *Tenant Remedies*

The remedies created under the mobile home statute parallel to a great extent those discussed under the landlord remedies section.<sup>184</sup> There are, however, several unique remedies established under the law including rent deposit, court-ordered repair, rent reduction and unconscionability. The tenant remedy sections can be divided into self-help and court-ordered relief.

As many of the mobile home provisions mirror those found in the apartment landlord-tenant law, a brief review of the precedent-setting case of *Shroades v. Rental Homes*<sup>185</sup> is important for this discussion. In

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N.E.2d 824 (1964); *Blenheim Homes v. Mathews*, 119 Ohio App. 44, 196 N.E.2d 612 (1963); *Barr Hotel Co. v. Lloyd MacKeown Buick Co.*, 104 Ohio App. 69, 146 N.E.2d 879 (1957). This creates unnecessary confusion which could be avoided by enumerating the specific circumstances warranting the eviction of a mobile homeowner. See also OHIO REV. CODE ANN. § 1923.02 (Page Supp. 1980), for a general list enumerating when a forcible entry and detainer action may be filed. This may well be accomplished by the holding of *Ward v. Allen*, No. L-80-388 (6th App. Dist 1981). See note 178 *supra*.

<sup>182</sup> OHIO REV. CODE ANN. § 3733.101 (Page 1980) discusses attorney fees only in actions to "recover actual damages." OHIO REV. CODE ANN. § 3733.101(C) (Page 1980). This seems to exclude the second sentence of subsection (C) which refers to actions to terminate the rental agreement, to obtain injunctive relief or recover the premises. OHIO REV. CODE ANN. § 3733.122(D) provides in reference to rent deposits:

If the court finds that the condition contained in the notice given pursuant to division (A) of section 3733.12 of the Revised Code was the result of an act or omission of the tenant, or that the tenant intentionally acted in bad faith in proceeding under section 3733.12 of the Revised Code, the tenant shall be liable for damages caused to the park operator, and for costs, together with the reasonable attorneys' fees if the tenant intentionally acted in bad faith.

OHIO REV. CODE ANN. § 3733.122(D) (Page 1980).

<sup>183</sup> OHIO REV. CODE ANN. § 3733.15(C) (Page 1980). Considering the relatively unequal bargaining positions between the two parties, it would seem doubtful that a rental agreement would ever contain a provision recognizing the awarding of attorneys' fees to a mobile homeowner. This provision is aimed at eliminating this additional threat of economic injury.

<sup>184</sup> See notes 158-83 *supra* and accompanying text.

<sup>185</sup> 68 Ohio St.2d 20 (1981).

*Shroades* a tenant was injured and hospitalized from a fall through a broken step on the outside stairway that led to her second floor apartment. The stairway was considered under the tenant's control and not a common area. Both the tenant and the fire chief had previously notified the landlord that this stairway needed repair. At trial the jury found for the tenant and the judgment was affirmed by the court of appeals, apparently before the litigants became aware of the Supreme Court's decision in *Thrash v. Hill*.<sup>186</sup> While the court in *Thrash* rejected the claim that the Ohio Landlord-Tenant law created "duties or standards of conduct for the breach of which a tenant may hold his landlord liable in tort,"<sup>187</sup> the *Shroades* court found "that a violation of this statute is negligence per se."<sup>188</sup> The court characterized the statutory remedies provided in Chapter 5321 as "intended to be preventive and supplemental to other remedial measures."<sup>189</sup> The retention of common law remedies possessed by both landlord and tenant was reaffirmed by the concurring opinion by Justice Clifford F. Brown.<sup>190</sup> The impact of *Shroades* should promote the same result in the decisions under the new mobile home law. In fact, because of the marked difference between the remedy provisions of these two statutes,<sup>191</sup> the holding of *Shroades* is even stronger with regard to the mobile home landlord-tenant law. Under section 5321.04(B) of the Ohio Revised Code<sup>192</sup> the remedy is limited to damages caused by the landlord making illegal or unreasonable entry into the tenant's premises. This is also covered in section

<sup>186</sup> 63 Ohio St.2d 178, 407 N.E.2d. 495 (1981).

<sup>187</sup> *Id.* at 183, 407 N.E.2d at 499 (Sweeney, J., dissenting).

<sup>188</sup> 68 Ohio St.2d at 26.

<sup>189</sup> *Id.* at 25.

<sup>190</sup> *Id.* at 27. See *Stronger v. Lindeman*, 68 Ohio St.2d 32 (1981), decided the same day as *Shroades*, which affirmed the liability of a landlord for negligence in the actual performance of repairs.

<sup>191</sup> Compare OHIO REV. CODE ANN. § 5321.04(B):

*If the landlord makes an entry in violation of division (A)(8) of this section, or makes a lawful entry in an unreasonable manner, or makes repeated demands for entry otherwise lawful which have the effect of harassing the tenant, the tenant may recover actual damages resulting therefrom and obtain injunctive relief to prevent the recurrence of the conduct, and if he obtains a judgment reasonable attorneys' fees, or terminate the rental agreement.*

OHIO REV. CODE ANN. § 5321.04(B) (Page 1980) (emphasis added). Regarding OHIO REV. CODE ANN. § 3733.10(B):

*If the park operator violates any provision of this section, makes a lawful entry onto the residential premises in an unreasonable manner, or makes repeated demands for entry otherwise lawful which demands have the effect of harassing the tenant, the tenant may recover actual damages resulting from the violation, entry or demands and injunctive relief to prevent the recurrence of the conduct, and if he obtains a judgment, reasonable attorneys' fees, or terminate the rental agreement.*

OHIO REV. CODE ANN. § 3733.19(B) (Page 1980) (emphasis added).

<sup>192</sup> OHIO REV. CODE ANN. § 5321.04(B) (Page 1980).

<sup>193</sup> OHIO REV. CODE ANN. § 3733.10(B) (Page 1980).

3733.10(B) of the Ohio Revised Code<sup>193</sup> but the Ohio General Assembly went beyond chapter 5321 to include coverage of any violation of section 3733.10.<sup>194</sup>

Pre-mobile home law decision by Ohio courts have not been favorable to tenants attempting to establish tort liability against part operators.<sup>195</sup> In light of section 3733.10(B), however, and buttressed by the decision in *Shroades*, such an action in tort may now lie against a park operator because of his failure to meet the statutory standards of habitability and maintenance of common areas.<sup>197</sup>

While self-help devices are prohibited in this statute for park operators, the Ohio General Assembly has encouraged mobile homeowners to use this device to enforce the statute. Under the law, a homeowner who reasonably believes that a park operator has failed to fulfill any obligations imposed by either Ohio Revised Code section 3733.10<sup>198</sup> or the rental agreement may, by following certain procedures, deposit rent with the Clerk of Courts of the appropriate municipal court.<sup>199</sup> In order to rent deposit, the mobile homeowner must have provided written notice specifying the omissions that violate his contractual or statutory rights.<sup>200</sup> After this notice, the law requires him to wait a reasonable time or thirty days, whichever is sooner, before depositing his rent.<sup>201</sup> What is "reasonable" is not defined by the Act, but the time period should be determined in light of the severity of the problems complained of and the time necessary to correct these conditions. A final precondition before depositing rent is that the mobile homeowner must be current in all rent due under the rental agreement;<sup>202</sup> also, when depositing his rent with the court, it must be done in a timely fashion.<sup>203</sup>

Failure to meet one or more of these preconditions will result in the park operator obtaining the release of the rent deposited with the court.<sup>204</sup> Any action to obtain the release of these monies must include the mobile homeowner as a party and, as in any civil action, the mobile home tenant has the right to file an answer and counterclaim. The statute mandates that a trial must be held within sixty days of the filing

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<sup>194</sup> See generally OHIO REV. CODE ANN. § 5321 (Page 1981) and § 3733.10 (Page 1980).

<sup>195</sup> *Hersch v. Anderson Acres, Inc.*, 5 Ohio Ops. 2d 432, 146 N.E.2d 648 (1957); See *Straley v. Keltner*, 109 Ohio App. 51, 164 N.E.2d 186 (1959).

<sup>196</sup> OHIO REV. CODE ANN. § 3733.10(B) (Page 1980).

<sup>197</sup> See notes 127-28 *supra* and accompanying text.

<sup>198</sup> *Id.* § 3733.10.

<sup>199</sup> *Id.* § 3733.12(B)(1).

<sup>200</sup> *Id.* § 3733.12(A). However, this requirement is presumed to be waived by the park operator for failure to provide written notice of the owner's and manager's name and address.

<sup>201</sup> OHIO REV. CODE ANN. § 3733.12(B) (Page 1980).

<sup>202</sup> *Id.*

<sup>203</sup> *Id.*

<sup>204</sup> *Id.* § 3733.122(C).



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The mobile homeowner has several other remedial options available which intertwine with the self-help right to deposit rent with the municipal court. Of the remaining remedies, most are not self-help in nature, but require action by the courts; of the four remaining statutory options available to mobile homeowners, three do not require the depositing of rent as a precondition to exercising them.<sup>211</sup>

When a mobile home tenant has exercised his right to rent deposit without obtaining the park operator's compliance, he may petition the court to release the funds so that repairs can be undertaken and paid for by these monies.<sup>212</sup> This, of course, requires as a precondition that the tenant has deposited his rent with the court. This statutory remedy is a hybrid of the common law "rent and deduct" concept.<sup>213</sup> The hybrid nature of this remedy abrogates its "self-help" nature by requiring the tenant to obtain a court order to exercise his right.<sup>214</sup>

A related remedy available to the mobile homeowner is to petition the court for an injunction ordering the park operator to meet his obligations under the statute or rental agreement.<sup>215</sup> In order to obtain

<sup>211</sup> Under OHIO REV. CODE ANN. § 3733.12(B)(2) (Page 1980), the tenant may request a court to issue an injunction to require the park operator to comply with his obligations and/or request a reduction in the amount of rent owed until the conditions complained of have been corrected. While these are mutually exclusive from the rent deposit scheme, the statutory notice and preconditions found in OHIO REV. CODE ANN. § 3733.12(A) and (B) (Page 1980), still must be met prior to taking such action. This is not the case with the remedy of "unconscionability" provided under OHIO REV. CODE ANN. § 3733.16 (Page 1980). The tenant may challenge any park rules, rent agreements, or their specific application under this section without meeting the criteria under rent depositing scheme.

<sup>212</sup> OHIO REV. CODE ANN. § 3733.12(B)(2) (Page 1980) in pertinent part provides that "the tenant . . . may apply for an order to use the rent deposited to remedy the condition. . . ." *Id.*

<sup>213</sup> An example of such rent and deduct decisions is *Marini v. Ireland*, 56 N.J. 130, 265 A.2d 526 (1970), which held that:

If, therefore, a landlord fails to make repairs and replacements of vital facilities necessary to maintain the premises in a livable condition for a period of time adequate to accomplish such repair and replacements, the tenant may cause the same to be done and deduct the cost thereof from future rents.

*Id.* at 148, 265 A.2d at 535.

<sup>214</sup> Delaware has adopted this common law doctrine specifically for mobile homeowners. DEL. CODE ANN. tit. 25, § 2007(e) (1975).

An informal rent and deduct remedy is recognized in the forcible entry and detainer statute. A tenant could make repairs, deducting the amount of the same from his future lot rent. If an eviction action is filed under OHIO REV. CODE ANN. § 1923.061 (Page Supp. 1980), a tenant may file counterclaims to the action. When the court awards damages to the tenant equalling or greater in amount to the rent owed, the action is to be dismissed. The problem is that failure to anticipate the court's judgment on reasonableness or the deductions results in the eviction of the tenant. For this reason, such self-help repair and deductions should not be encouraged.

<sup>215</sup> OHIO REV. CODE ANN. § 3733.12(B)(2) (Page 1980). Most states permit a private attorney general type of action to enforce their mobile home statutes. See, e.g., N.J. STAT. ANN. §§ 46.82.2 to 46.82.7 (Supp. 1978-79). See also Comment,

this order, the mobile homeowner must meet the usual criteria required before issuing any equitable remedy.<sup>216</sup>

Lot rent reduction is a further remedy for enforcing the rights of mobile homeowners. Under the law the tenant can request the court to reduce the amount of rent owed until the conditions complained of are corrected.<sup>217</sup> The statute provides no guidance to the court in selecting the method to determine the size of rent abatement or reduction, but because a rental agreement is a contract, the Uniform Commercial Code provisions offer a widely accepted method for this computation.<sup>218</sup> A court using this method would examine the fair market value of the rental agreement with and without the breach by the park operator to determine the size of the reduction.<sup>219</sup> Ohio courts have accepted this doctrine in similar circumstances.<sup>220</sup>

The final statutory remedy is the use of the "unconscionability concept" to attack arbitrary park rules, rental agreements or their specific applications to a mobile homeowner.<sup>221</sup> This concept can be used either as part of a defensive or offensive litigation strategy.<sup>222</sup> This statutory remedy is simply a recognition of an Anglo-Saxon tradition established more than two hundred years ago.<sup>223</sup> The legislature provided this remedy to mobile homeowners after recognizing that unequal bargaining

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*Housing Code Enforcement by Private Attorneys General: A Better Way?*, 1973 URB. L. ANN. 299.

<sup>216</sup> See note 164 *supra* and accompanying text.

<sup>217</sup> OHIO REV. CODE ANN. § 3733.12(B)(2) (Page 1980).

<sup>218</sup> Under U.C.C. § 2-714(2), damages in a breach of warranty are measured by the difference between the value of the goods received and the value of the goods warranted.

<sup>219</sup> The fair market value of the agreement need not be the same as the agreed upon lot rent. The court should use the bargained for rent as evidence of fair market value, but this should not be conclusive under this method. See *Noble v. Tweedy*, 90 Cal. App. 2d 738, 203 P.2d 778 (1949).

<sup>220</sup> *Cochran v. Widra*, 35 Ohio Law Abs. 608, 41 N.E.2d 875 (1931).

<sup>221</sup> OHIO REV. CODE ANN. § 3733.16 (Page 1980). Other states have similar laws mandating the unenforceability of unconscionable rules. See *Miller v. Valley Forge Village*, 43 N.Y.2d 626, 374 N.E.2d 118, 403 N.Y.S.2d 207 (1978); ARIZ. REV. STAT. ANN. § 33-1411; FLA. STAT. ANN. § 83.754 (West 1980); IOWA CODE ANN. § 562B.8 (West 1980); KY. REV. STAT. ANN. § 383.555 (Baldwin 1979); MONT. REV. CODE ANN. § 70-24-404; N.M. STAT. ANN. § 47-8-12; N.Y. REAL PROP. LAW § 233 (McKinney 1980).

<sup>222</sup> For example, a tenant could file an action under section 16 arguing that a park rule is unconscionable on its face or as it is applied to him. This would be part of an offensive litigation strategy. On the other hand, a tenant could use this concept to defend himself against an eviction action based on violation of a rule which should not be enforced because of its unconscionability.

<sup>223</sup> One of the earliest recognitions in the United States of this concept described unconscionability as "a contract such as no man in his senses and not under delusion would make on the one hand, and as no honest and fair man would accept on the other." *Hume v. United States*, 132 U.S. 406, 415 (1889), quoting *Earl of Chesterfield v. Janssen*, 28 Eng. Rep. 82, 100 (Ch. 1750).

positions exist which tend to create rules and agreements decidedly oppressive or one-sided.<sup>224</sup> Using this tool, a court may redistribute and equitably balance the parties' relationship.

The omission by the Ohio General Assembly of one of the remedies available to apartment renters emphasizes the unique needs of mobile homeowners. Under the 1974 Landlord-Tenant Act, the legislature recognized that a remedy for a landlord's breach is the termination of the rental agreement.<sup>225</sup> There is no comparable provision in the mobile home statute. This conspicuous absence emphasizes that the Ohio General Assembly understood the economic impact involved in relocating a mobile home. Offering such relief to a wronged tenant would be ignoring the realities of mobile home living, and Ohio courts should consider this unique situation when they are called upon to enforce these new statutory tenant remedies.

The issue of retaliation closely follows the discussion of the landlord's remedy of eviction because retaliatory conduct is often alleged as the true reason for the action. Mobile homeowners are always subject to the possibility of park retaliation, and thus many tenants are reluctant to exercise their rights for fear of harassment or termination of the rental agreement. A growing number of states have taken legislative action to protect individuals from retaliatory eviction. New Jersey, in enacting, what is probably the strongest law on the subject, includes protection for complaints to officials, tenant organization activities and even refusals to pay rents increased illegally.<sup>226</sup>

Ohio also has a retaliatory conduct provision in its mobile home law.<sup>227</sup> It prohibits the park operator from retaliating against a mobile homeowner by increasing the rent, bringing or threatening to bring an eviction action, or decreasing services to the tenant.<sup>228</sup> The mobile homeowner must show that the park operator's conduct was motivated, at least in part,<sup>229</sup> by one of the following actions: (1) The tenant has complained to an appropriate governmental agency of a violation of a building, housing, health, or safety code that is applicable to the premises, and the violation materially affects health and safety; (2) The

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<sup>224</sup> See *In re Elkins-Dell Mfg. Co.*, 253 F. Supp. 864 (E.D. Pa. 1966); *Campbell Soup Co. v. Wentz*, 172 F.2d 80 (3rd Cir. 1948). See generally Ellinghaus, *In Defense of Unconscionability*, 78 YALE L.J. 757 (1969).

<sup>225</sup> OHIO REV. CODE ANN. § 5321.07(B)(3) (Page 1981).

<sup>226</sup> N.J. STAT. ANN. §§ 2A, 42-10(1) (West Supp. 1980). To a lesser degree, Delaware, Florida, Michigan and Minnesota have provisions to prevent retaliatory evictions.

<sup>227</sup> OHIO REV. CODE ANN. § 3733.09 (Page 1980).

<sup>228</sup> *Id.* § 3733.09(A).

<sup>229</sup> It is axiomatic that, if a wrongful purpose such as retaliation is merely one of many of what are otherwise legitimate reasons, retaliation "cannot be brushed aside because it was *neither the sole reason . . . nor the total factor.*" *Smith v. Sol D. Adler Realty Corp.*, 436 F.2d 344, 349 (7th Cir. 1970) (emphasis in original). Indeed, there is "no acceptable place in the law for 'partial' [retaliation]." *Id.* at 350.

tenant has complained to the park operator of any violation of section 3733.10 of the Revised Code; or (3) The tenant joined with other tenants for the purpose of negotiating or dealing collectively with the park operator on any of the terms and conditions of a rental agreement.<sup>230</sup>

The statute does not include a rebuttable presumption requiring the landlord to prove, under certain circumstances, the absence of retaliatory intent.<sup>231</sup> While this may limit the effectiveness of the statutory protections, tenants need only prove their claim by a preponderance of the evidence. Evidence to support such a claim could include: (a) Time period between protected action and retaliatory conduct;<sup>232</sup> (b) Arbitrary or inconsistent application of rules against one individual engaging in a protected conduct but not against others who do not engage in such conduct;<sup>233</sup> or (c) Lack of justification for an eviction.<sup>234</sup>

The courts should be sensitive to the impact of retaliatory conduct on

<sup>230</sup> OHIO REV. CODE ANN. § 3733.09(A)(1)-(3) (Page 1980).

<sup>231</sup> However, the court has the inherent power to establish such a presumption. This was the case in *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 865 (D.C. Cir. 1972) which held that:

It is commonplace, however, that a jury can judge a landlord's state of mind . . . by examining its objective manifestations. Thus, when a landlord's conduct is "inherently destructive" of tenants' rights, or unavoidably chills their exercise, the jury may, under well recognized principles, presume that the landlord intended this result. . . . Once the presumption is established, it is then up to the landlord to rebut it by demonstrating that he is motivated by some legitimate business purpose. . . .

*Id.* (emphasis added).

<sup>232</sup> In housing litigation, courts have looked beyond the landlord's ostensible motive and have held that the law bars sophisticated as well as simple-minded retaliation. See *United States v. Pelzer Realty Co., Inc.*, 484 F.2d 438 (5th Cir. 1973). In *Lavoie v. Bigwood*, 457 F.2d 7, 15 (1st Cir. 1972), for example, the court prohibited a park operator's retaliation against the exercise by a tenant of speaking out regarding conditions and organizing a tenants union. Likewise, a landlord's retaliatory conduct by way of eviction was barred where the tenant merely complained about conditions. See *Robinson v. Diamond Housing Corp.*, 463 F.2d 853 (D.C. Cir. 1972). See also *Ohio Landlord-Tenant Reform Act*, *supra* note 31, at 929-43.

<sup>233</sup> In another type of housing case, the United States Supreme Court has instructed:

*Departures from the normal procedural sequence* also might affirm evidence that *improper purposes* are playing a role. Substantive departures too may be relevant, particularly if the factors usually considered important by the decisionmaker strongly favor a decision contrary to the one reached.

*Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 267 (1977) (emphasis added).

<sup>234</sup> *Schweiger v. Superior Court*, 3 Cal. 2d 507, 476 P.2d 97, 90 Cal. Rptr. 729 (1970); *S.P. Growers Assoc. v. Rodriguez*, 17 Cal. 3d 719, 552 P.2d 721, 131 Cal. Rptr. 761 (1976).

all park tenants as well as the affected individual tenant.<sup>235</sup> A liberal approach to the submission of evidence is the best protection against park operators attempting to circumvent the legislative reform represented in the mobile home statute. A finding by a court of retaliatory conduct by a park operator is grounds for awarding actual damages suffered by the tenant together with reasonable attorney fees.<sup>236</sup> Actual damages have been interpreted broadly in Ohio to include humiliation, mental distress and loss of time or property.<sup>237</sup>

Ohio's retaliatory provision has been upheld in the courts.<sup>238</sup> Florida's

<sup>235</sup> The ramifications of retaliatory conduct are broader than effectively forcing out one responsible tenant: It chills the very exercise of rights granted by the Act. In the best known landlord-tenant retaliation case, *Edwards v. Habib*, 397 F.2d 687 (D.C. Cir.), *cert. denied*, 393 U.S. 1016 (1968), Judge Skelly Wright explained that the "effectiveness of remedial [landlord-tenant] legislation will be inhibited if those reporting violations of it can legally be intimidated." *Id.* In *Portnoy v. Hill*, 57 Misc. 2d 1097, 294 N.Y.S.2d 278 (1968), the court held the understanding that no action in possession would be taken by the landlord if a tenant would stop exercising his rights to be retaliatory. A landlord, up until the enactment of the Ohio Act, could legally employ the most blatant and reprehensible of tactics if a tenant were to complain about conditions. Retaliation, by threat of eviction, as here or by other means, was one of the "most frightening problem[s]." Note, *The Use of the Federal Remedy to Bar Retaliatory Eviction*, 30 U. CIN. L. REV. 712, 712 (1970).

<sup>236</sup> OHIO REV. CODE ANN. § 3733.09(B) (Page 1980) provides:

If a park operator acts in violation of division (A) of this section, the tenant may:

- (1) Use the retaliatory action of the park operator as a defense to an action by the park operator to recover possession of the premises;
- (2) Recover possession of the premises;
- (3) Terminate the rental agreement.

In addition, the tenant may recover from the park operator any actual damages together with reasonable attorneys fees.

*Id.*

<sup>237</sup> Damages which are awarded for humiliation, mental distress, and lost time, are *not* punitive but actual under Ohio law. In *Smith v. Pittsburgh, Ft. Wayne and Chicago Ry. Co.*, 23 Ohio St. 10 (1872), the Ohio Supreme Court stated:

It is true, the law does not profess to compensate for remote and possible injuries resulting from the act of a wrongdoer, but it does profess to make the injured party whole, by compensating him, in damages, for all the natural, necessary, and probable injuries resulting therefrom. . . . This process of reasoning brings us to the inevitable conclusion, that injuries to the person, whether they consist of mental or physical pain, as well as loss of time or property, which naturally and necessarily result from the wrongful and deliberate act of the defendant, are proper subjects for the consideration of the jury in their estimate of compensatory damages.

*Id.* at 18-19. See also *Brownlee v. Pratt*, 77 Ohio App. 533, 68 N.E.2d 798 (1946); *Rose Co. v. Lowery*, 33 Ohio App. 488, 169 N.E. 716 (1929). This also applies equally to awards of actual damages under OHIO REV. CODE ANN. §§ 3733.10, 3733.101, 3733.14 (Page 1980).

<sup>238</sup> A similar provision in the apartment landlord-tenant law has been reviewed and upheld by the Ohio courts. *Laster v. Bowman*, 52 Ohio App. 2d 379, 370

eviction protections, which are more stringent than Ohio's, have also been judicially tested and found to be constitutional.<sup>239</sup>

An important remedy and method of protecting the equity of the mobile homeowner is to permit the selling of their unit in place within the mobile home park. Ohio has followed the lead of other states in adopting this type of protection against interference from park operators.<sup>240</sup> The noninterference requirement is created by the framework of four different sections of the new law<sup>241</sup> and, considered together, they act to limit the economic penalties that park operators can impose to prevent a return on the capital investment of the tenant.

N.E.2d 767 (1977); *Belvoir Cliff Apartments, Ltd. v. Bemby*, 56 Ohio Misc. 37, 383 N.E.2d 1170 (1978).

<sup>239</sup> In *Palm Beach Mobile Homes, Inc. v. Strong*, 300 So.2d 881 (Fla. 1974), a tenant was allowed to remain in a park despite the termination by the park of his oral month-to-month tenancy. The same year, several eviction cases consolidated as *Stewart v. Green*, 300 So.2d 889 (Fla. 1974), a case in which the court declared that due to the unique landlord-tenant relationship of mobile home parks and homeowners, the tenancies required special treatment. The unequal power of a park owner over a homeowner tenant therefore requires careful consideration in eviction actions.

<sup>240</sup> ME. REV. STAT. ANN. tit. 30, § 4066 (1978).

<sup>241</sup> All four sections of this "noninterference" concept are found in OHIO REV. CODE ANN. § 3733.11 (Page 1980), which states:

(A) The park operator shall offer the tenant the opportunity to sign a rental agreement for a minimum of one year for residential premises prior to the installation of the house trailer in the house trailer park, the terms of which shall be essentially the same as for any alternate month-to-month tenancy.

...

(F) No park operator shall require a tenant to purchase or lease a house trailer from any specific dealer as a condition of or prerequisite for entering into a rental agreement.

...

(H) No park operator shall:

- (1) Deny any tenant the right to sell his house trailer within the house trailer park if the tenant gives the park operator ten days notice of his intention to sell his house trailer;
- (2) Require the tenant to remove the house trailer from the house trailer park solely on the basis of the sale of the house trailer;
- (3) Unreasonably refuse to enter into a rental agreement with a purchaser of a house trailer located within his house trailer park.

...

(K) No park operator shall enter into a rental agreement with the owner of a trailer for the use of residential premises, if the rental agreement requires the owner of the trailer, as a condition to his renting, occupying or remaining on the residential premises to pay the park operator or another person specified in the rental agreement a fee or any sum of money based on the sale of the trailer, unless the owner of the trailer uses the park operator or other person as his agent in the sale of the trailer.

The mobile homeowner's right to noninterference is triggered by a tenant notifying the park operator of his intention to sell the mobile home.<sup>242</sup> If the tenant gives this notice, the park operator can neither require the mobile home to be moved solely because of its sale<sup>243</sup> nor unreasonably refuse to enter into a rental agreement with the purchaser of the unit.<sup>244</sup> Also, the park operator cannot require the tenant to give a commission on the sale of the home unless he acted as the agent.<sup>245</sup>

Three cases have reviewed the issue of sales interference by park operators. These cases support the need for legal action in order to insure that this important piece of reform legislation provides the protection which the legislature intended. In *Mentor Trailer Park, Inc. v. Clark*,<sup>246</sup> the court, while evicting Mrs. Clark for other reasons, stated that: "This Court agrees with defendant that Ohio Revised Code Sections 3733.09 to 3733.20 are remedial and that Plaintiff's professed policy of requiring a second owner to move a bought trailer [mobile home] without regard to age and condition of such is improper."<sup>247</sup>

In the recent case of *Jameson v. Sommers Mobile Home Sales, Inc.*,<sup>249</sup> a park operator required tenants to sell their homes through his dealership or, alternatively, remove the home within thirty days of purchase. The court decided that such action was illegal under the new statute, declaring: "[T]o hold otherwise would forever forestall the reforms intended by R.C. Section 3733.01 et seq. Such policy is clearly a violation of both the letter and the spirit of R.C. Section 3733.11(F) and (K)."<sup>249</sup>

The final sales interference case, *Trailer Mart v. Semanach*,<sup>250</sup> involved the owner of a mobile home purchased from a previous owner, who faced eviction proceedings because children were allegedly not allowed in his section of the park.<sup>251</sup> Evidence revealed that other children did in fact live in the section in question, and the jury found that the action to evict was really based on the fact that the previous owner had sold the home and not paid the park owner a commission. A similar effort to ac-

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<sup>242</sup> OHIO REV. CODE ANN. § 3733.11(H)(1) (page 1980). The notice must be given at least 10 days prior to selling the mobile home.

<sup>243</sup> OHIO REV. CODE ANN. § 3733.11(H)(2) (Page 1980).

<sup>244</sup> OHIO REV. CODE ANN. § 3733.11(H)(3) (Page 1980) Also, under OHIO REV. CODE ANN. § 3733.11(H) (Page 1980), this offer must be of a one year lease.

<sup>245</sup> OHIO REV. CODE ANN. § 3733.11(K) (Page 1980). Such a ban on all commissions or entrance fees, whether paid by the homeowner or the broker, was upheld in *People v. Mel Mack Co.*, 53 Cal. App. 3d 621, 126 Cal. Rptr. 505 (1975).

<sup>246</sup> *Mentor Trailer Park v. Clark*, No. CVG, 492 (Mentor Mun. Ct., June 7, 1979).

<sup>247</sup> *Id.*

<sup>248</sup> *Jameson v. Sommer's Mobile Home Sales, Inc.*, No. 83769 (Elyria Mun. Ct., May 13, 1980).

<sup>249</sup> *Id.*

<sup>250</sup> *Trailer Mart v. Semanach*, No. 20397 (Berea Muni. Ct., June 11, 1980).

<sup>251</sup> *Id.*



comply with park rule what the law forbids arose in Maryland; a park rule required that "all homes to be placed or retained after resale in the Park must . . . [be either a] new home or current year model. . . ." <sup>252</sup> The court found that such a park rule violated the purpose of the Act which was to protect mobile home owners by preventing certain abusive practices and to insure their ability to sell their mobile homes. <sup>253</sup>

## V. CONCLUSION

The law has made great strides toward establishing a balancing of interests and responsibilities between mobile homeowners and park operators. This area of the law will continue to undergo rapid changes in the next few years as courts struggle to balance the complex relationships between park operators and mobile homeowners. <sup>254</sup> The Mobile Home Landlord-Tenant law can be a genuine instrument for reform only if its provisions are liberally interpreted to give full meaning to the Ohio General Assembly's intent in enacting this law.

While the Ohio Landlord-Tenant law preceded the Mobile Home Landlord-Tenant Act, the unique qualities of the latter dictate that its rights and remedies must be considered independently from its "big brother"

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<sup>252</sup> *Cider Barrel Mobile Home Court v. Eader*, 414 A.2d 1246 (Md. App. 1980).

<sup>253</sup> *Id.*

<sup>254</sup> A recent federal appellate decision supports this proposition. In *Ware v. Trailer Mart, Inc.*, 623 F.2d 1150 (1980), the Court of Appeals for the Sixth Circuit found that a person attempting to rent a lot space in a mobile home park, who was denied rental because of his refusal to buy a home from the park operator, stated a valid claim under the federal antitrust laws. Judge Martin, writing the opinion stated that:

Trailer Mart attempts to distinguish *Reiter* by noting that Mrs. Reiter actually purchased the hearing aid at an illegally inflated price. Here, insists defendant, Captain Ware never intended to enter into the tying arrangement since he did not want to purchase mobile home. We believe that this argument begs the question. Captain Ware has alleged a wrongful deprivation of money by having to pay double rent for the apartment and mobile home rental space. He incurred this loss because of Trailer Mart's anticompetitive conduct in tying homesite leases to trailer purchases. We therefore find that Ware has properly claimed an injury under Section 4 and may, accordingly, sue to recover damages for the alleged violations of Section 1 of the Sherman Act.

*Id.* at 1153.

The questions raised by specific practices not covered by the law include the prohibition in many parks of "for sale" signs as a means of selling the home. Results from litigation in other states have been mixed. Florida has allowed "for sale" signs, but parks may apply reasonable restrictions to their size, placement, etc. See FLA. STAT ANN. § 83.765 (West 1980); *Blair v. Mobile Home Communities, Inc.*, 345 So. 2d 101 (Fla. 1977). New York, to the contrary, has upheld the ban on such signs in parks. See also N.Y. REAL PROP. LAW § 233 (McKinney 1980); *Miller v. Valley Forge Village*, 43 N.Y.2d 626, 347 N.E.2d 118, 403 N.Y.S.2d 207 (1978).

statute. The extensive case law built up around tenant rights with the associated movement toward social reform, however, should not be ignored, but blended with the newer law.

The new law, while improving the quality of the landlord-tenant relationship, is still at this point merely a paper law. It remains largely untested and often ignored by park operators. Without the forceful advocacy of the legal profession, the reforms intended in this legislative action can never come to fruition. Individual homeowners, often isolated from vital legal information concerning their rights, need vigorous involvement to better guarantee a safe and decent residence, a basic right for all people, not only for the benefit of those who choose to live in conventional site-built housing.

